United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL APPENDIX

75-7450

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IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

DAILY MIRROR, INC.,

Plaintiff-Appellant,

vs.

NEW YORK NEWS INC., HARRY GARFINKLE, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, HONORABLE MARVIN E. FRANKEL, DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

SUPPLEMENTAL APPENDIX OF DEFENDANT-APPELLEE NEW YORK NEWS INC.

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COMPLAINT

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC., Plaintiff,	:	Civil Action No.
- against -	:	COMPLAINT
NEW YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., AND ANCORP, INC., Defendants.	:	PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiff, by its attorney, Vincent J. Debo, for its complaint in this action, alleges as follows:

FOR A FIRST CAUSE OF ACTION

1. This cause of action arises out of the Anti-Trust Laws of the United States, more particularly the Sherman Anti-Trust Act, 15 USC Sections 1 and 2, as hereinafter more fully appears.

2. At the times herein mentioned, Plaintiff was and now is a New York business corporation with its offices and principal place of business in the County of Queens, City and State of New York.

3. At the times herein mentioned, Plaintiff published and now publishes a daily tabloid newspaper entitled, "Daily Mirror", which is sold and distributed principally in the City of New York, the counties of Nassau, Suffolk, Westchester, Rockland,

and throughout the State of New Jersey, and is distributed in various other cities within the State of New York and the United States. Plaintiff's main source of income derives from the sale of such newspaper on newsstands throughout the cities and counties as hereinbefore described. A secondary source of income derives from a sale of advertising space in this publication to individual and firms located throughout the United States. Plaintiff is engaged in interstate commerce.

4. Upon information and belief, the Defendant, New York News, Inc., was and now is a New York membership corporation. The New York News, Inc. is engaged in interstate trade and commerce in that it produces, publishes, sells and distributes newspapers throughout the United States.

5. At the times herein mentioned, Defendants, Union News Company, Inc., American News Company, Inc., and Ancorp, Inc. were and now are corporations engaged in the distribution of various newspapers, periodicals and other publications and/or the principal stockholder of the above described corporations, and, on information and belief, said Defendants were and now are New York membership corporations.

6. At the times herein mentioned, Defendant Henry Garfinkel was and now is a principal of all of the distribution companies, and, on information and belief, said Defendant was and is now a New York resident.

7. At the times hereinafter mentioned, all of the said defendant corporations were acting through their respective duly authorized officers, agents, representatives and employees and the

combination, conspiracy and acts hereinafter complained of were entered into and performed by such officers, agents, representatives and employees with the knowledge and sanction of their respective corporations.

8. Commencing in or about January, 1971, and continuing thereafter and continuing to date, Defendants, their agents, servants and/or employees, did knowingly and unlawfully combine, conspire, agree and have a tacit understanding together with each other and with various other individuals and firms to restrain and/or monopolize trade and commerce in the dissemination of news, newspapers and other activities within and/or related to the newspaper industry in and among the several states, and they did in fact restrain and/or monopolize such interstate trade and commerce in violation of Section 1 of the Sherman Act. Said offenses will continue unless the relief hereinafter prayed for is granted.

9. The said combination, conspiracy and actions of Defendants were in violation of Sections 1 and 2 of the Sherman Anti-Trust Act, 15 USC Sections 1 and 2.

10. It was a part of the said combination and conspiracy and the object and purpose thereof to accomplish the following, among other things:

a. To knowingly and unlawfully destroy Plaintiff's publication and to drive Plaintiff out of business;

b. To knowingly and unlawfully suppress and eliminate competition between and among newspapers and other publications serving the general public;

c. To knowingly and unlawfully create a monopoly in the dissemination of news; and

d. Agree not to distribute Plaintiff's newspape to any newsstand or other distribution points serviced by the Defendants or those that they controlled.

11. As part of the said combination and conspiracy and to each effectual to object and purpose, Defendants did the following, among other things:

a. They refused to carry Plaintiff's newspaper and to distribute them to their newsstands throughout the City of New York and various other parts of the State of New York and the United States.

b. They exerted pressure on individuals and firms to whom they regularly distribute newspapers and other periodicals to refrain from carrying Plaintiff's newspaper and to refrain from advertising in Plaintiff's newspapers.

c. They sponsored and helped the "Daily News" by [illegible]ing additional copies of the above described newspaper to be distributed to their distribution places in order to eliminate the distribution and sale of Plaintiff's newspaper thereby diverting from the Plaintiff a very substantial portion of its circulation.

d. They attempted to divert and did in fact divert a very substantial portion of the advertising which might have been placed in Plaintiff's newspaper.

12. The aforesaid offenses have had, among others, an effect wherein substantial numbers of the public have been denied reasonable access to Plaintiff's newspaper.

13. As a result of the said combination, and actions of

the Defendants, Plaintiff has sustained severe damage and injury to its business and property in the actual amount of Ten Million and 00/100 ($10,000,000.00) Dollars, and, under Section 4 of the Sherman Anti-Trust Act (15 USC Section 4), Plaintiff is entitled to recover from Defendants three-fold damages in the sum of Thirty Million and 00/100 ($30,000,000.00) Dollars, together with interest and the costs and disbursements of this action, including reasonable attorneys' fees.

FOR A SECOND CAUSE OF ACTION

14. This cause of action arises under the Anti-Trust Laws of the State of New York, more particularly the Donnelly Anti-Trust Act, General Business Law Section 340, as hereinbefore more fully appears, and, jurisdiction exists by virtue of the doctrine of pendent jurisdiction.

15. Plaintiff repeats each and every allegation contained in paragraphs "2" to "12", inclusive, of this complaint, with the same force and effect as it fully set forth herein.

16. The said combination, conspiracy and acts of Defendants restrained and/or monopolized trade and commerce in the dissemination of news and other activities dealing with general public information and knowledge in the State of New York as well as in and among the several states, and thereby Defendants also violated Section 1 of the Donnelly Anti-Trust Act, General Business Law Section 340.

17. As a result of the said combination, conspiracy and the acts of Defendants, Plaintiff has sustained severe damage and injury to its business and property in the sum of Ten Million and

00/100 ($10,000,000.00) Dollars, and Plaintiff is entitled to recover such sum from Defendants together with interest and the cost of disbursements of this action.

FOR A THIRD CAUSE OF ACTION

18. This cause of action arises under the common law of the State of New York, and jurisdiction exists by virtue of the doctrine of pendent jurisdiction.

19. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "2" to "12", inclusive, of this complaint with the same force and effect as if more fully set fort herein.

20. The said combination, conspiracy and acts of Defendants were entered into and performed by them maliciously and without justification.

21. As a result of the said combination and conspiracy and acts of Defendants, Plaintiff's business and property have been damaged in the actual sum of Ten Million and 00/100 ($10,000,000.00) Dollars, and Plaintiff is entitled to recover such sum from Defendants for its compensatory damages. Plaintiff is further entitled to recover from Defendants the sum of Twenty Million and 00/100 ($20,000,000.00) Dollars as punitive damages, or total damages in the sum of Thirty Million and 00/100 ($30,000,000.00) Dollars, together with interest and the costs and disbursements of this action.

FOR A FOURTH CAUSE OF ACTION

22. This cause of action arises under Section 1 of the

Sherman Anti-Trust Act, 15 USC Section 1, as hereinafter more fully appears.

23. Plaintiff repeats each and every allegation contained in paragraphs "2," "3," "4," "5," "6," "7," "8," "9," "10," "11" and "12," of this complaint with the same force and effect as if fully set forth herein.

24. Commencing in or about the later part of the year 1970 or the early part of the year 1971, and continuing thereafter and continues to date, Defendants, their agents, servants and employees, did knowingly and unlawfully, combine, conspire, agree and have a tacit understanding, together with each other and with various other persons and firms to restrain trade or commerce in the dissemination of newspapers, periodicals and other publications in and among the several states, and they did in fact restrain such trade and commerce.

25. The said combination, conspiracy and acts of Defendants were in violation of Section 1 of the Sherman Anti-Trust Act, 15 USC Section 1.

26. It was a part of the said combination and conspiracy and the object and purpose thereof to suppress and eliminate competition in the newspaper and publishing industry, and more particularly to suppress and eliminate the Plaintiff as a competitor to the "Daily News" and to cause Plaintiff to fail as a newspaper and publishing venture.

27. As part of the said combination and conspiracy and to effectuate its object and purpose, Defendants agreed among themselves to cause other advertisers to refrain from placing any

advertisements in Plaintiff's newspaper, and Defendants did in fact cause advertisers to refrain from placing virtually any advertisements.

28. As a result of the said combination, conspiracy and acts of Defendants, Plaintiff has lost a very substantial amount of advertising income and profits which it could have otherwise reasonably expected to earn. Plaintiff has thereby sustained severe damage and injury to its business and property in the actual amount of Five Million and 00/100 ($5,000,000.00) Dollars, and, under Section 4 of the said Sherman Anti-Trust Act. 15 USC Section 4, Plaintiff is entitled to recover from Defendants three-fold damages in the sum of Fifteen Million and 00/100 ($15,000,000.00) Dollars, together with interest and the cost and disbursements of this action, including reasonable attorneys' fees

FOR A FIFTH CAUSE OF ACTION

29. This cause of action arises under Section 1 of the Donnelly Anti-Trust Act, General Business Law, Section 340, as hereinafter more fully appears, and jurisdiction exists by virtue of the doctrine of pendent jurisdiction.

30. Plaintiff repeats each and every allegation contained in paragraphs "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "24," "25," "26," and "27" of this complaint, with the same force and effect as if fully set forth herein.

31. The said combination, conspiracy and acts of Defendants restrained trade and commerce in the dissemination of newspapers, periodicals and other publications in the State of New York as well as in and among the several states, and thereby

Defendants also violated Section 1 of the Donnelly Anti-Trust Act, General Business Law Section 340.

32. As a result of the said combination and conspiracy and acts of Defendants, Plaintiff has lost a very substantial amount of advertising income and profits which it could have otherwise reasonably expected to earn. Plaintiff has thereby sustained severe damage and injury to its business and property in the actual sum of Five Million and 00/100 ($5,000,000.00) Dollars, and Plaintiff is entitled to recover such sum from Defendants, together with interest and the costs and disbursements of this action.

Wherefore, Plaintiff demands judgment against Defendants and each of them as follows:

a. in the first cause of action, in the sum of Thirty Million and 00/100 ($30,000,000.00) Dollars, together with interest and the costs and disbursements of the action, including reasonable attorneys' fees;

b. in the second cause of action, in the sum of Ten Million and 00/100 ($10,000,000.00) Dollars, together with interest and the costs and disbursements of the action;

c. in the third cause of action, in the sum of Thirty Million and 00/100 ($30,000,000.00) Dollars, together with interest and the costs and disbursements of the action;

d. in the fourth cause of action, in the sum of Fifteen Million and 00/100 ($15,000,000.00) Dollars, together with interest and the costs and disbursements of the action, including reasonable attorneys' fees; and

e. in the fifth cause of action, the sum of Five Million and 00/100 ($5,000,000.00) Dollars, together with interest and the costs and disbursements of the action.

Vincent J. Debo
Attorney for Plaintiff

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff,

-against-

NEW YORK NEWS INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

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71 Civ. 1211

INTERROGATORIES

PLEASE TAKE NOTICE that pursuant to Rule 33 of the Federal Rules of Civil Procedure defendant NEW YORK NEWS INC. propounds the following interrogatories to be answered by plaintiff within 30 days after the service hereof. These interrogatories shall be deemed to be continuing so as to require plaintiff to seasonably supplement or amend its answers thereto as is more fully set forth in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

A. As used herein, "you" or "your" means plaintiff, its subsidiaries and its merged or acquired predecessors, its present and former officers, employes, agents and all other persons acting on behalf of the plaintiff or such subsidiaries or such predecessors.

B. As used herein, the term "document" means any book, pamphlet, letter, telegram, report, memorandum, record,

diary, study, working paper, paper, chart, graph, data processing card or tape, or any other writing.

C. The term "identify" , when used herein with reference to an individual person, means to state his full name and present address, if known, and his present or last known business position and affiliation. "Identify" when used with reference to a document means to state the date and author, the type of document (e.g., letter, memorandum, telegram, etc.), the addressee, and its present location or custodian.

INTERROGATORIES

1. As to plaintiff's status as a corporation, state:

(a). the state in which it was incorporated,

(b). the place where it was incorporated,

(c). the date it was incorporated,

(d). the amount of capitalization of plaintiff at the time of its organization,

(e). the name and address of each incorporator or promoter,

(f). the name and address of each of its officers, directors, or other principals as of January 1st of each year since its incorporation and at the present time,

(g). the number of employees employed on January 1st of each year since its incorporation, and at the present time,

(h). with respect to plaintiff's shareholders,

(i). the number thereof on January 1st of each year since its incorporation and at the present time,

(ii). the name and address of each shareholder holding more than 5 per cent of the outstanding shares on January 1st of each year since its incorporation and at the present time and the number of shares held by each,

(i). the number and dates of meetings of shareholders that have been held since plaintiff's organization, and

(j). the number and dates of meetings of the board of directors that have been held since plaintiff's organization.

2. State the principal business of plaintiff, how long plaintiff has been engaged in that business, whether plaintiff is engaged in any ancillary business, and, if so, for each other business, state:

(a). the nature and extent thereof,

(b). the date or dates of existence of each, and

(c). the form of organization.

3. State whether plaintiff has or ever had any subsidiaries or affiliates and, if so, with respect to each subsidiary or affiliate, state (a). the name, address and job title of each officer and director; (b). the name and address of each stockholder; and (c). its date and state of incorporation and its form of organization.

4. State the nature, extent and duration of each relationship or connection between plaintiff and (a) New York Mirror, Inc., (b) Mirror Publications, Inc., (c) National Telepix, Inc. and (d) Publishers Distributing Corporation, including the following as to each such company:

(a). the number of shares and percentage holding of stock or other security in such company held, directly or indirectly, by plaintiff or by any of its officers, directors or employees during each year since 1964,

(b). the number of shares and percentage holding of stock or other security issued by plaintiff and held, directly or indirectly, by such company, its officers, directors or other principals, during each year since 1964,

(c). each joint venture, written agreement of agency or other legal or business relationship between plaintiff and such company, its officers, directors or other principals, including, but not

limited to, contracts, loans, agreements, leases, mortgages, deeds, assignments, licenses, options, undertakings, notes, trust receipts, choses in action, easements, bills of exchange, instruments and conveyances, and

(d). the identity of any persons now or ever employed by, or under contract to, plaintiff who are or have been employed by or under contract to such company, including the job title and period or periods of employment of each such person with plaintiff and with such company.

5. In regard to Paragraph 3 of the complaint, state

(a). the period or periods during which plaintiff, its predecessors in interest or past or present affiliates, have published daily and/or Sunday newspapers, the name of each such newspaper, its frequency of and place of publication, retail price, method of distribution, wire and press service memberships, the address or addresses of its executive office, advertising, promotion and printing facilities, and type or composition method used,

(b). the total circulation of the "Daily Mirror" referred to in said paragraph for each of the counties mentioned therein (Manhattan, Bronx, Kings, Queens, Richmond, Nassau, Suffolk, Westchester and

Rockland) and in the State of New Jersey during each month of publication,

(c). the total circulation of said "Daily Mirror" in all areas during each month of publication including a breakdown of said circulation as follows: (i) dealers and carriers, (ii) street vendors, (iii) counter sales by publisher, (iv) mail subscriptions (v) free copies and (vi) returned, undelivered, left over and unsold copies,

(d). the identity of the "various other cities within the State of New York and the United States" referred to in said paragraph, and furnish the information requested in 5(b) above for each such city,

(e). the percentage of total income and revenues derived by plaintiff during each month of publication (i) from the sale of said "Daily Mirror" on newsstands or otherwise and (ii) from sale of advertising space in said publication, and

(f). whether you contend that any copies of the "Daily Mirror" have been or are being distributed in intrastate commerce and, if so, state the number of such copies for each month of publication and the identity and location of the persons, firms and corporations by whom and to whom such copies were or are distributed.

In regard to Paragraph 8 of the complaint:

6. State the date the alleged combination and conspiracy began.

7. (a) State whether each defendant has been engaged in the alleged combination and conspiracy throughout the entire period of the purported conspiracy; (b) If not, state the time at which each defendant joined the alleged combination and conspiracy and the time at which it withdrew therefrom; (c) If any defendant withdrew from the combination and conspiracy, state whether that defendant later rejoined the combination and conspiracy, and identify each such defendant, state the time such defendant rejoined and identify the act by which it rejoined.

8. As to each defendant, identify and describe the act by which it first joined the alleged combination and conspiracy. As to each such act, specify the time when and place where it occurred, and identify each person who acted for each defendant.

9. If the exact dates when each defendant first joined the alleged combination and conspiracy are unknown, state the first date known upon which each defendant first engaged in the alleged combination, conspiracy and list the other defendants who were engaged in the alleged combination, conspiracy and actions on such date, the time and place where the act occurred and identify each person who acted for each defendant.

10. (a). State whether the alleged continuing understanding referred to in said paragraph is claimed to have been express or implied or partly express and partly implied.

(b). Insofar as the alleged continuing understanding is claimed to have been express, state whether it was oral or written or partly oral and partly written. To the extent written, identify all documents embodying the continuing understanding, specifying the dates of and parties to all such documents. To the extent oral, state the substance thereof, and the participants in and the time and place of each conversation, and identify all documents which relate to each such conversation, specifying the dates of and parties to all such documents.

(c). Insofar as the alleged continuing understanding is claimed to have been implied, state the substance thereof and identify the documents or acts from which it is implied. Specify the date of and parties to each such document, the time and place of each act, and the names of the persons who performed each act.

11. Identify each of the "various other individuals and firms" described in said paragraph and supply the information requested by Interrogatories 7, 8 and 9 above as to each

(ii). each price or pricing policy, sales or selling policy, distribution or distribution policy established or discussed in regard to each such product, commodity or thing,

(e). the identity of each person present at such meeting or conference other than the defendants or their representatives,

(f). whether you have custody of any minutes or other writings which you contend contain a record of what occurred at such meeting or conference, and, if so, for each such writing, give

(i). the identity of each person who prepared the writing,

(ii). the date on which the writing wad prepared, and

(iii). the identity of each person who has custody of such writing.

14. State whether you contend that there were or have been communications or exchanges of information between the defendants in furtherance of the alleged combination and conspiracy other than at meetings or conferences and, if so, for each such communication or exchange of information, state:

(a). the date,

(b). whether the communication or exchange of information was oral or in writing,

such individual and firm substituting "each other individual and firm" for "each defendant" therein.

12. Identify the "other activities" described in said paragraph and, as to each such activity listed, specify the date, time and place where it occurred and identify each person who acted for on behalf of each defendant.

13. State whether you contend that the defendants held meetings or conferences pursuant to the combination and conspiracy alleged in the complaint. If so, for each such meeting or conference, state:

(a). the date and hour when held, and the address at which held,

(b). the identity of each executive, agent, representative or employee whom you contend represented defendant New York News Inc. at such meeting or conference,

(c). the identity of each executive, agent, representative or employee whom you contend represented each of the other defendants,

(d). each action taken, decision made, or agreement reached at such meeting or conference in furtherance of the alleged combination and conspiracy, and

(i). each product, commodity or thing to which the action, decision or agreement related,

(c). between which defendants and which executive, agent, representative or employee of each such defendant the communication or exchange of information occurred,

(d). the content of each communication and each item of information exchanged,

(e). how each communication aided in fulfilling the purposes and objects of the combination and conspiracy alleged in the complaint,

(f). the manner in which the information exchanged was used to further said combination and conspiracy,

(g). the identity of each person other than the defendants, or the executives, agents, representatives or employees listed above who witnessed or was present during such communication or exchange of information and

(h). whether you have custody of any writing whereby information was exchanged, and, if so, the identity of each person who has custody of each such writing.

In respect to Paragraph 10 of the complaint:

15. State whether the alleged combination and conspiracy had any objects and purposes other than those set

forth in Paragraph 10. If so, specify all such other objects and purposes.

16. In regard to each of the objects and purposes specified in Paragraph 10, state separately what action in fact each defendant agreed to take (i.e., the means and methods agreed to by which (i) plaintiff's publication was to be destroyed and plaintiff driven out of business, (ii) competition was to be suppressed and eliminated, (iii) a monopoly was to be created and (iv) plaintiff's newspaper was not to be distributed).

17. Identify each of "newspapers and other publications serving the general public" referred to in Paragraph 10(b).

18. In regard to Paragraph 10(d), identify each newsstand or distribution point referred to, and as to each such newsstand or distribution point, state whether it is alleged to be serviced or controlled by defendants and, if so, by which defendant, during what period or periods and identify each person representing or acting on behalf of each defendant as to each such facility listed.

In regard to Paragraph 11 of the complaint:

19. (a). Specify and describe each "thing" (act) done by each defendant to effectuate or in any way to further the alleged combination and conspiracy (including all meetings held, agreements reached

or other overt acts claimed to have been done) other than the "things" listed in subparagraphs (a) through (d) of Paragraph 11 of the complaint.

(b). As to each such thing listed in your answer to 19(a) above, (i) identify the person or persons who acted for each defendant; (ii) the time and place of each such act; (iii) state the substance of what was said by each party; (iv) identify each person having information or knowledge of such act; and (v) identify each document relating or referring in whole or in part to such act.

20. In regard to subparagraph (a) of Paragraph 11:

(a). State the date, time and place of each such alleged refusal,

(b). Identify the person or persons representing or acting on behalf of each defendant who participated in each such refusal,

(c). Identify each of the "newsstands" referred to,

(d). Identify each of the "various other parts of the State of New York and the United States" referred to,

(e). State the reason given for each such refusal and identify the person to whom said reason was given, and the date thereof,

(f). Identify each person having information or knowledge of the facts alleged in said subparagraph, and

(g). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

21. In regard to subparagraph (b) of Paragraph 11:

(a). State the date, time and place of each occasion on which such pressure was allegedly exerted,

(b). Identify each individual, firm and corporation on which such pressure was allegedly exerted and the person or persons representing or acting on behalf of each of the defendants allegedly exerting such pressure,

(c). State the substance of what was said by each person present at each such occasion,

(d). Identify each person having knowledge or information of the facts alleged in said subparagraph, and

(e). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

22. In regard to subparagraph (c) of Paragraph 11:

(a). State the date, time and place of each such instance,

(b). Identify each person representing or acting on behalf of each defendant during each such instance,

(c). Identify each of the "distribution places" to which additional copies of the "Daily News" were allegedly distributed,

(d). Identify each person having knowledge or information of the facts alleged in said paragraph, and,

(e). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

23. In regard to subparagraph (d) of Paragraph 11:

(a). State the date, time and place of each such instance,

(b). Identify each such advertisement, including the date submitted, the identity of the person submitting same and the person to whom it was submitted,

(c). Identify each person representing or acting on behalf of each defendant during each

such instance,

(d). State each and every fact on which you will rely to support your contention that defendants "did in fact divert a very substantial portion of the advertising which might have been placed in plaintiff's newspaper,"

(e). Identify each person having knowledge or information of the facts alleged in said subparagraph, and

(f). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

24. State whether you contend that competition between plaintiff and any other newspaper has been or will be unreasonably restrained as a result of the combination and conspiracy referred to in the complaint. If so,

(a). Name each such other newspaper whose ability to compete will be, or is likely to be, unreasonably restrained,

(b). Specify whether in each such instance there has been detriment to actual or potential competition, or both, and, if so, describe the nature of such detriment specifying whether the competition involved is actual or potential or both,

(c). Specify the manner in which competition is or may be unreasonably restrained in each such instance including, but not limited to, each line of commerce in which and each product for which competition is or may be allegedly unreasonably restrained, and

(d). Identify each person who has knowledge of, and identify each document upon which you will rely to prove, this contention.

25. In regard to Paragraph 12 of the complaint, (a). Identify the segment or segments of the public which have been allegedly denied such access, and (b). State the name and address of each firm, person and corporation whom you contend has been denied reasonable access to plaintiff's newspaper which denial was caused in whole or in part by the actions of defendants complained of and describe each such denial and state how each such denial was effected.

26. Identify each person, firm and corporation who has complained about defendants in connection with the alleged denial of reasonable access to plaintiff's newspaper if said person will be a witness for plaintiff at the trial herein or concerning whom plaintiff intends to offer any evidence at trial.

27. Identify each communication, written or oral, received by plaintiff from any person, firm and corporation complaining that he, she or it was, has been or is being

deprived of the opportunity to obtain plaintiff's newspaper, if the communication is to be offered by plaintiff as evidence at the trial hereof.

28. State whether you have obtained a statement, affidavit or report from any person, firm and corporation alleged to have been affected by the activities of defendants described in Paragraphs 8, 9, 10, 11 and 12 of the complaint and, if so, (a) if the statement, affidavit or report is in writing identify each such item and (b) if the statement, affidavit or report is oral, state when, by whom and to whom it was made and whether it was reduced to writing at a later date and, if so, who now has possession or custody of such writing.

29. Identify each person, firm or corporation (excluding defendant, their officers, agents and employees) whom the plaintiff intends to call as a witness at the trial and who has been interviewed by plaintiff in connection with any of the matters referred to in Paragraphs 8, 9, 10, 11 and 12 of the complaint, and (a). give the date and place of each such interview and identify each person present, and (b). if any discussions at such interviews were reduced to memorandum form, identify each such memorandum.

30. With respect to Paragraph 13 of the complaint, set forth (a). the manner, method or formula by which the damage and injury there set forth was computed, (b). the person or persons who calculated the amount of damage and injury claimed, (c). if such damage and injury was derived from

documents, identify each such document, and (d). as to each defendant, describe each act causing damage and injury, the date thereof, and the amount of damage and injury attributed to each such act.

31. Supply the information requested in Interrogatory 30 above with regard to the damage and/or injury claimed in Paragraphs 17, 21, 28 and 32 of the complaint.

32. Do you claim damages in this proceeding for the loss of advertising from customers to whom you have sold advertising space at any time? If so, state as to each such customer,

(a). its name and address, and the identity of the person in charge of purchasing advertising on its behalf,

(b). the period or periods during which you sold advertising to this customer and the date, if any, that these sales ceased,

(c). the total amount of advertising (dollars and linage) actually sold to said customer for each year from 1964 to date,

(d). whether you are claiming damages in this proceeding because you directly or indirectly made unsuccessful attempts to sell advertising to said customer, and if so, give the following details concerning each such attempt: (i) the date made, (ii) the identity of the person making such attempt

on your behalf and the person representing the customer to or concerning whom the attempt was made, (iii) the type of advertisement involved, the actual price and discount, if any, offered by you and your applicable list price, if any, for each such type of advertisement, and (iv) the particular response made by the customer to the attempt, the date thereof and the identity of the person making said response and of the person to whom said response was made and whether the response was made orally, in writing, by telephone or by other means,

(e). describe each fact on which you will rely to support the contention that the loss of such advertising was caused by defendants' alleged combination and conspiracy, and

(f). the identify of each document, including salesmen's reports, relating to or commenting on such lost advertising.

33. Do you claim damages in this proceeding for the loss of advertising from customers to whom you have never sold advertising? If so, state as to each such customer:

(a). its name and address and the identity of the person in charge of purchasing advertising on its behalf,

(b). the factual basis for your claim that said company was a potential customer of yours,

(c). the type of advertising in which said company was or would have been interested in purchasing from you,

(d). whether you, directly or indirectly, made any attempts to sell advertising to, or to solicit orders for advertising from said customer,

(e). if so, state (i) the date each such attempt or solicitation was made, (ii) the identity of the person making each such attempt or solicitation on your behalf and the person representing said customer to whom each such attempt or solicitation was made, (iii) the type of advertising that was offered, the actual price and discount, if any, offered by you and your applicable list price, if any, for each such type of advertising, and (iv) the particular response made by said customer, the identity of the person making said response, the date thereof, the person to whom said response was made and whether the response was made orally, in writing, by telephone or by other means,

(f). a description of each fact and document on which you will rely to support the contention that any of the events or occurrences listed above

were caused by defendants' alleged combination and conspiracy, and

(g). the identity of each document, including salesmen's reports, relating to or commenting on the attempts or solicitations described in your answer to (e) above in particular, or on the possibility of selling advertising to said customer, in general.

TOWNLEY, UPDIKE, CARTER & RODGERS

By _____
A Member of the Firm

Attorneys for Defendant
New York News Inc.
220 East 42nd Street
New York, New York 10017
212 682-4567

TO: VINCENT J. DEBO, ESQ.

Attorney for Plaintiff
1140 Sixth Avenue
New York, New York 10036
212 972-1200

NEWS' FIRST SET OF INTERROGATORIES - APRIL 6, 1971

dsa 33

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

71 Civ. 1211

MARY ANN BANKOVICH, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 225 Water Street, Perth Amboy, New Jersey, 08861. That on the 6th day of April, 1971, deponent served the within Interrogatories upon Vincent J. Debo, Esq. attorney for Plaintiff in this action, at 1140 Sixth Avenue, New York, New York, 10036 the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in official depository under the exclusive care and custody of the United States post office department within the State of New York.

Mary Ann Bankovich

Sworn to before me, this
6th day of April 1971.

John D Canoni

Notary Public

JOHN D. CANONI
NOTARY PUBLIC, State of New York
No. 60-5505940 Qual. in Westchester Co.
Certificate filed in New York County
Commission Expires March 30, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed	7/20/73
L/D m/s	8/3/73
Plaintiff	8/1/73
BY "	

DAILY MIRROR, INC.,

Plaintiff,

-against-

NEW YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

71 Civ. 1211 (RLC)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of John D. Canoni, Esq., sworn to the 20th day of July, 1973, the exhibits annexed thereto, and upon all papers heretofore filed and proceedings heretofore had herein, defendant New York News, Inc. (hereinafter "The News") will move this Court at the United States Court House, Foley Square, New York, New York, in Room 905, on the 3rd day of August, 1973, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for:

(1) an order pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure dismissing this action as against The News on the ground that plaintiff has failed to obey the June 21, 1973 order of this Court requiring it to answer the interrogatories served upon it by The News by July 16, 1973; and

(2) an order pursuant to Rule 37(d) of the Federal Rules of Civil Procedure dismissing this action as against The News on the ground that plaintiff has failed to serve answers to interrogatories submitted under Rule 33 after proper service thereof; and

(3) an order pursuant to Rules 37(b)(2) and 37(d) of the Federal Rules of Civil Procedure requiring plaintiff or the attorney advising it, or both, to pay the reasonable expenses, including attorneys' fees, of this motion on the grounds stated in (1) and (2) above; and

for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 20, 1973

TOWNLEY, UPDIKE, CARTER & RODGERS

By _____
A Member of the Firm
Attorneys for Defendant New York News, Inc.
220 East 42nd Street
New York, New York 10017
(212) 682-4567

TO:

ROBERT W. FARRELL, ESQ.
Attorney for Plaintiff
67 Park Avenue
New York, New York 10016
(212) 787-7001

EUGENE FREDERICK ROTH, ESQ.
Attorney for Remaining Defendants
230 Park Avenue
New York, New York 10017
(212) 686-8030

Issued	
Served (X)	2/7/74
Entered	2/4/74
Filed	2/4/74
L/D 7 to	
ans.	3/11/74
DY	KCS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff,

-against-

NEW YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

~~71 Civ. 1211~~ (RO)

SECOND SET OF INTERROGATORIES

PLEASE TAKE NOTICE that pursuant to Rule 33 of the Federal Rules of Civil Procedure defendant NEW YORK NEWS INC. propounds the following interrogatories to be answered by plaintiff under oath within 30 days after the service hereof. These interrogatories shall be deemed to be continuing so as to require plaintiff to seasonably supplement or amend its answers thereto as is more fully set forth in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

A. As used herein, "you" or "your" means plaintiff, its subsidiaries and its merged or acquired predecessors, its present and former officers, employes, agents and all other persons acting on behalf of the plaintiff or such subsidiaries or such predecessors.

B. As used herein, the term "document" means any book, pamphlet, letter, telegram, report, memorandum, record, diary, study, working paper, paper, chart, graph, data processing card or tape, or any other writing.

C. The term "identify", when used herein with reference to an individual person, means to state his full name and present address, if known, and his present or last known business position and affiliation. "Identify" when used with reference to a document means to state the date and author, the type of document (e.g., letter, memorandum, telegram, etc.), the addresses, and its present location or custodian.

INTERROGATORIES

1. State whether plaintiff has or ever had any subsidiaries or affiliates and, if so, with respect to each subsidiary or affiliate, state (a). the name, address and job title of each officer and director; (b). the name and address of each stockholder; and (c). its date and state of incorporation and its form of organization.

2. State the nature, extent and duration of each relationship or connection between plaintiff and (a) New York Mirror, Inc., (b) Mirror Publications, Inc., (c) National Telepix, Inc. and (d) Publishers Distributing Corporation, including the following as to each such company:

(a). the number of shares and percentage holding of stock or other security in such company held, directly or indirectly, by plaintiff or by any of its officers, directors or employees,

(b). the number of shares and percentage holding of stock or other security issued by plaintiff and held, directly or indirectly, by such company, its officers, directors or other principals, and

(c). the identity of any person now or ever employed by, or under contract to, plaintiff who are

or have been employed by or under contract to such company, including the job title and period or periods of employment of each such person with plaintiff and with such company.

In regard to Paragraph 8 of the complaint:

3. (a) State whether each defendant has been engaged in the alleged combination and conspiracy throughout the entire period of the purported conspiracy; (b) If not, state the time at which each defendant joined the alleged combination and conspiracy and the time at which it withdrew therefrom; (c) If any defendant withdrew from the combination and conspiracy, state whether that defendant later rejoined the combination and conspiracy, and identify each such defendant, state the time such defendant rejoined and identify the act by which it rejoined.

4. As to each defendant, identify and describe the act by which it first joined the alleged combination and conspiracy. As to each such act, specify the time when and place where it occurred, and identify each person who acted for each defendant.

5. If the exact dates when each defendant first joined the alleged combination and conspiracy are unknown, state the first date known upon which each defendant first engaged in the alleged combination, conspiracy and list the other defendants who were engaged in the alleged combination, conspiracy and actions on such date, the time and place where the act occurred and identify each person who acted for each defendant.

6. (a). State whether the alleged continuing understanding referred to in said Paragraph 8 is claimed to have been express or implied or partly express and partly implied.

(b). Insofar as the alleged continuing understanding is claimed to have been express, state whether it was oral or written or partly oral and partly written. To the extent written, identify all documents embodying the continuing understanding, specifying the dates of and parties to all such documents. To the extent oral, state the substance thereof, and the participants in and the time and place of each conversation, and identify all documents which relate to each such conversation, specifying the dates of and parties to all such documents.

(c). Insofar as the alleged continuing understanding is claimed to have been implied, state the substance thereof and identify the documents or acts from which it is implied. Specify the date of and parties to each such document, the time and place of each act, and the names of the persons who performed each act.

7. Identify each of the "various other individuals and firms" described in said Paragraph 8 and supply the information requested by Interrogatories 3, 4 and 5 above as to each such individual and firm substituting "each other individual and firm" for "each defendant" therein.

8. Identify the "other activities" described in said Paragraph 8 and, as to each such activity listed, specify the date, time and place where it occurred and identify each person who acted for on behalf of each defendant.

9. State whether you contend that the defendants held meetings or conferences pursuant to the combination and conspiracy

alleged in the complaint. If so, for each such meeting or conference, state:

(a). the date and hour when held, and the address at which held,

(b). the identity of each executive, agent, representative or employee whom you contend represented (i) defendant New York News Inc. and (ii) each of the other defendants at such meeting or conference,

(c). each action taken, decision made, or agreement reached at such meeting or conference in furtherance of the alleged combination and conspiracy, and

(i). each product, commodity or thing to which the action, decision or agreement related,

(ii). each price or pricing policy, sales or selling policy, distribution or distribution policy established or discussed in regard to each such product, commodity or thing,

(d). the identity of each person present at such meeting or conference other than the defendants or their representatives,

(e). whether you have custody of any minutes or other writings which you contend contain a record of what occurred at such meeting or conference, and, if so, for each such writing, give the identity of each person who prepared the writing, the date on which it was prepared and the identity of each person who has custody of such writing.

10. State whether you contend that there were or have been communications or exchanges of information between the defendants in furtherance of the alleged combination and conspiracy other than at meetings or conferences and, if so, for each such communication or exchange of information, state:

(a). the date and whether the communication or exchange of information was oral or in writing,

(b). between or among which defendants and which executive, agent, representative or employee of each such defendant the communication or exchange of information occurred,

(c). the content of each communication and each item of information exchanged,

(d). the identity of each person other than the defendants, or the executives, agents, representatives or employees listed above who witnessed or was present during such communication or exchange of information and

(e). whether you have custody of any writing whereby information was exchanged, and, if so, the identity of each person who has custody of each such writing.

In respect to Paragraph 10 of the complaint:

11. State whether the alleged combination and conspiracy had any objects and purposes other than those set forth in Paragraph 10 of the complaint. If so, specify all such other objects and purposes.

12. In regard to each of the objects and purposes specified in Paragraph 10, state separately what action in fact

each defendant agreed to take (i.e., the means and methods agreed to by which (i) plaintiff's publication was to be destroyed and plaintiff driven out of business, (ii) competition was to be suppressed and eliminated, (iii) a monopoly was to be created and (iv) plaintiff's newspaper was not to be distributed).

13. Identify each of "newspapers and other publications serving the general public" referred to in Paragraph 10(b) of the complaint.

14. In regard to Paragraph 10(d), identify each newsstand or distribution point referred to, and as to each such newsstand or distribution point, state whether it is alleged to be serviced or controlled by defendants and, if so, by which defendant, during what period or periods and identify each person representing or acting on behalf of each defendant as to each such facility listed.

In regard to Paragraph 11 of the complaint:

15. (a). Specify and describe each "thing" (act) done by each defendant to effectuate or in any way to further the alleged combination and conspiracy (including all meetings held, agreements reached or other overt acts claimed to have been done) other than the "things" listed in subparagraphs (a) through (d) of Paragraph 11 of the complaint.

(b). As to each such thing listed in your answer to 15(a) above, (i) identify the person or persons who acted for each defendant; (ii) the time and place of each such act; (iii) state the substance of what was said by each party; (iv) identify each person having information or knowledge of such act; and (v) identify

each document relating or referring in whole or in part to such act.

16. In regard to subparagraph (a) of Paragraph 11:

(a). State the date, time and place of each such alleged refusal,

(b). Identify the person or persons representing or acting on behalf of each defendant who participated in each such refusal,

(c). Identify each of the "newsstands" referred to,

(d). Identify each of the "various other parts of the State of New York and the United States" related to,

(e). State the reason given for each such refusal and identify the person to whom said reason was given, and the date thereof,

(f). Identify each person having information or knowledge of the facts alleged in said subparagraph, and

(g). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

17. In regard to subparagraph (b) of Paragraph 11.

(a). State the date, time and place of each occasion on which such pressure was allegedly exerted,

(b). Identify each individual, firm and corporation on which such pressure was allegedly exerted and the person or persons representing or acting on behalf of each of the defendants allegedly exerting such pressure,

(c). State the substance of what was said by each person at each such occasion,

(d). Identify each person having knowledge or information of the facts alleged in such subparagraph, and

(e). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

18. In regard to subparagraph (c) of Paragraph 11:

(a). State the date, time and place of each such instance,

(b). Identify each person representing or acting on behalf of each defendant during each such instance,

(c). Identify each of the "distribution places" to which additional copies of the "Daily News" were allegedly distributed,

(d). Identify each person having knowledge or information of the facts alleged in said paragraph, and,

(e). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

19. In regard to subparagraph (d) of Paragraph 11:

(a). State the date, time and place of each such instance,

(b). Identify each such advertisement, including the date submitted, the identity of the person submitting same and the person to whom it was submitted,

(c). Identify each person representing or acting on behalf of each defendant during each such instance,

(d). State each and every fact on which you will rely to support your contention that defendants "did in fact divert a very substantial portion of the advertising which might have been placed in plaintiff's newspaper,"

(e). Identify each person having knowledge or information of the facts alleged in said subparagraph, and

(f). Identify each document referring or relating in whole or in part to the allegations of said subparagraph.

20. State whether you contend that competition between plaintiff and any other newspaper has been or will be unreasonably restrained as a result of the combination and conspiracy referred to in the complaint. If so,

(a). Name each such other newspaper whose ability to compete will be, or is likely to be, unreasonably restrained,

(b). Specify whether in each such instance there has been detriment to actual or potential competition, or both, and, if so, describe the nature of such detriment

specifying whether the competition involved is actual or potential or both,

(c). Specify the manner in which competition is or may be unreasonably restrained in each such instance including, but not limited to, each line of commerce in which and each product for which competition is or may be allegedly unreasonably restrained, and

(d). Identify each person who has knowledge of, and identify each document upon which you will rely to prove, this contention.

21. In regard to Paragraph 12 of the complaint, (a). Identify the segment or segments of the public which have been allegedly denied such access, and (b). State the name and address of each firm, person and corporation whom you contend has been denied reasonable access to plaintiff's newspaper which denial was caused in whole or in part by the actions of defendants complained of and describe each such denial and state how each such denial was effected.

22. Identify each person, firm and corporation who has complained about defendants in connection with the alleged denial of reasonable access to plaintiff's newspaper if said person will be a witness for plaintiff at the trial herein or concerning whom plaintiff intends to offer any evidence at trial.

23. Identify each communication, written or oral, received by plaintiff from any person, firm and corporation complaining that he, she or it was, has been or is being deprived of the opportunity to obtain plaintiff's newspaper, if the communication is to be offered by plaintiff as evidence at the trial hereof.

24. State whether you have obtained a statement, affidavit or report from any person, firm and corporation alleged to have been affected by the activities of defendants described in Paragraphs 8, 9, 10, 11 and 12 of the complaint and, if so, (a) if the statement, affidavit or report is in writing identify each such item and (b) if the statement, affidavit or report is oral, state when, by whom and to whom it was made and whether it was reduced to writing at a later date and, if so, who now has possession or custody of such writing.

25. Identify each person, firm or corporation (excluding defendant, their officers, agents and employees) whom the plaintiff intends to call as a witness at the trial and who has been interviewed by plaintiff in connection with any of the matters referred to in Paragraphs 8, 9, 10, 11 and 12 of the complaint, and (a). give the date and place of each such interview and identify each person present, and (b). if any discussions at such interviews were reduced to memorandum form, identify each such memorandum.

26. With respect to Paragraph 13 of the complaint, set forth (a). the manner, method or formula by which the damage and injury there set forth was computed, (b). if such damage and injury was derived from documents, identify each such document, and (c). as to each defendant, describe each act causing damage and injury, the date thereof, and the amount of damage and injury attributed to each such act.

27. Supply the information requested in Interrogatory 26 above with regard to the damage and/or injury claimed in Paragraphs 17, 21, 28 and 32 of the complaint.

28. With respect to your claim of damages in this proceeding for the loss of advertising from customers to whom you have sold advertising space at any time, state as to each such customer:

(a). its name and address, and the identity of the person in charge of purchasing advertising on its behalf,

(b). the period or periods during which you sold advertising to this customer and the date, if any, that these sales ceased,

(c). the total amount of advertising (dollars and linage) actually sold to said customer,

(d). with respect to your claim of damages in this proceeding because you directly or indirectly made unsuccessful attempts to sell advertising to said customer, give the following details concerning each such attempt: (i) the date made, (ii) the identity of the person making such attempt on your behalf and the person representing the customer to or concerning whom the attempt was made, (iii) the type of advertisement involved, the actual price and discount, if any, offered by you and your applicable list price, if any, for each such type of advertisement, and (iv) the particular response made by the customer to the attempt, the date thereof and the identity of the person making said response and of the person to whom said response was made and whether the response was made orally, in writing, by telephone or by other means,

(e). describe each fact on which you will rely to support the contention that the loss of such advertising was caused by defendants' alleged combination and conspiracy, and

(f). identify each document, including salesmen's reports, relating to or commenting on such lost advertising.

29. With respect to your claim of damages in this proceeding for the loss of advertising from customers to whom you have never sold advertising, state as to each such customer:

(a). its name and address and the identity of the person in charge of purchasing advertising on its behalf,

(b). the factual basis for your claim that said company was a potential customer of yours,

(c). the type of advertising in which said company was or would have been interested in purchasing from you,

(d). whether you, directly or indirectly, made any attempts to sell advertising to, or to solicit orders for advertising from said customer,

(e). if so, state (i) the date each such attempt or solicitation was made, (ii) the identity of the person making each such attempt or solicitation on your behalf and the person representing said customer to whom each such attempt or solicitation was made, (iii) the type of advertising that was offered, the actual price and discount, if any, offered by you and your applicable list price, if any, for each such type of advertising, and (iv) the particular response made by said customer, the identity of the person making said response, the date thereof, the person to whom said response was made and whether the response was made orally, in writing, by telephone or by other means,

(f). a description of each fact and document on which you will rely to support the contention that any of the events or occurrences listed above were caused by defendants' alleged combination and conspiracy, and

(g). the identity of each document, including salesmen's reports, relating to or commenting on the attempts or solicitations described in your answer to (e) above in particular, or on the possibility of selling advertising to said customer, in general.

Dated: New York, New York
February 4, 1974

TOWNLEY, UPDIKE, CARTER & RODGERS

By _____
A Member of the Firm

Attorneys for Defendant
New York News Inc.
220 East 42nd Street
New York, New York 10017
(212) 682-4567

TO:

ROBERT W. FARRELL, ESQ.
Attorney for Plaintiff
67 Park Avenue
New York, New York 10016

BARRETT G. KREISBERG, ESQ.
Attorney for Defendant
Harry Garfinkle
104 East 40th Street
New York, New York

SAXE, BACON, BOLAN & MANLEY, ESQS.
Attorneys for Remaining Defendants
39 East 68th Street
New York, New York 1002

LETTER OF JOHN D. CANONI, ESQ., TO ROBERT W. FARRELL, ESQ., DATED FEBRUARY 28, 1974

February 28, 1974

Robert W. Farrell, Esq.
67 Park Avenue
New York, New York 10016

Re: Daily Mirror, Inc. v. Ancorp, Inc. et al.; 71 Civ. 1211(RLC)

Dear Mr. Farrell:

Pursuant to a notice that appeared in this morning's Law Journal, I learned that Judge Carter had scheduled a pre-trial conference for 9:30 a.m. today in Room 129. I appeared then and found that I was the only attorney present.

Judge Carter said that you had been sent a notice several weeks ago setting this conference for today together with the request that you notify defendants' counsel accordingly. I said that I had not received any such notice and suggested that the Judge may want to reschedule the conference so that all counsel could be present. Judge Carter said that this would not be done since appropriate notice of today's conference had already been sent.

Judge Carter then pointed out that last year he had fixed August 31, 1973 as the last day to complete discovery. He said a new schedule was necessary and asked me to communicate that schedule to all counsel. It is as follows:

1. April 12, 1974 - last day to complete all depositions and other discovery and, also, last day for parties to file any motions;

2. May 17, 1974 - last day for parties to submit pre-trial order in usual form containing stipulations as to facts and issues and other items normally includable therein;

LETTER OF JOHN D. CANONI, ESQ., TO ROBERT W. FARRELL, ESQ., DATED FEBRUARY 28, 1974

3. May 31, 1974 - last day for parties to exchange pre-marked exhibits and to resolve objections in connection therewith and to file memoranda;

4. June 1, 1974 - case to be marked ready and to be tried during June as soon as the Judge can get to it.

It will be essential, of course, that these scheduled dates are met. Among the matters to be attended to are the plaintiff's answers to our second set of interrogatories. These are presently due on March 11, 1974 and, in light of the above schedule, the Jews will not be able to grant any extension of time beyond April 1, 1974.

If you wish to continue the Underwood deposition, I would suggest either Friday, March 15 (morning) or Thursday, March 21 (morning). We will also expect that the transcript of the February 22, 1974 Underwood taker deposition will be made available to us no later than April 1, 1974.

Sincerely yours,

JOHN D. CANONI

JDC:mmb

cc: Barrett G. [illegible], Esq.
Jeffrey Beaman, Esq.

PLAINTIFF'S NOTICE OF MOTION - APRIL 12, 1974 FOR FURTHER DISCOVERY

dsa 53

Rec'd M	4/12/74
Served	
Entered	4/12/74
Filed	
L/W M/P	4/17/74
BY	JCS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT,NEW YORK
----------x

DAILY MIRROR INC.,

Plaintiff

-against-

NEW YORK NEWS INC.,HARRY GARFINKLE, AMERICAN NEWS COMPANY,INC.,UNION NEWS CO.,INC.,and ANCOPR,INC..

----------x

71 CIV. 1211

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE,that the undersigned,upon the affidavit of ROBERT W.FARRELL sworn to the 8th day of April 1974, and upon the papers and proceedings heretofore had herein,will apply on the 17th day of April 1974 at 9AM in the forenoon at the Courthouse of the Southern District Court of the United States District Court,Foley Square,before the Hon.Judge Robert L.Carter, requiring the taking of depositions of one William McCullough, President of the American News Company,Inc.,a subsidiary of the Ancorp,Inc.;one Archie Gordon,an employee of the defendant New York News Inc.,and an agent of that company and a key witness for the Plaintiff's case; one Willie Levine an employee or former employee of the defendant Ancorp Inc.,and a key witness for the Plaintiff in the matters alleged in Plaintiff's complaint,and for a further ORDER;

Disqualifying the attorney Roy Cohn Esq.,and his law firm,Saxe,Bacon,Bolan & Manley Esqs.,and any member thereof from acting in any capacity for any of the defendants,Ancorp Inc., American News Company Inc.,and Union News Company Inc.;and for a further ORDER;and Direction of the Court;

In the excercise of its discretion,authorizing the continuance of this action,free of the general stay over and against creditor and claimants issues in the regular courseor act

of the Bankruptcy Court herein, upon the filing of a Petition of Chapter II arrangement for relief by the defendant Ancorp, Inc., long after the institution of this action, with its creditors, and for such other and further relief as this Court may deem proper.

Yours, etc.:

ROBERT W. FARRELL
Attorney for the Plaintiff
67 Park Avenue
New York City, N.Y.
516-248-8245

TO: Townley, Updike, Carter & Rogers Esqs.
220 East 42nd Street
New York City, N.Y. 10017

Barret W. Kreisberg Esq.
104 East 40th Street
New York City, N.Y. 10016
Attorney for defendant Henry Garfinkle

Eugene Frederick Roth Esq.
230 Park Avenue
New York City, N.Y. 10017

Saxe, Bacon, Bolan & Manley Esq.
39 East 68th Street
New York City, N.Y.

Attorneys for defendants Union Home Company and American Home Company and Ancorp, Inc.

dsa 55

NEWS' AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S APRIL 12, 1974 MOTION FOR FURTHER DISCOVERY

Entered	4/17/74
Filed	4/16/74
L/D MR	4/17/74
BY	CSB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

DAILY MIRROR, INC.,

Plaintiff,

- against -

NEW YORK NEWS INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP., INC.,

Defendants.

71 Civ. 1211

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S UNDATED MOTION RETURNABLE APRIL 17, 1974

- -X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MARK D. GERAGHTY, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before this Court, I am a member of the firm of Townley, Updike, Carter & Rodgers, attorneys for defendant New York News Inc. (the "News") and I am familiar with all proceedings had heretofore in the above-entitled action. This affidavit is made and filed in opposition to the plaintiff's undated motion returnable before this Court on April 17, 1974 with respect to all requests for relief contained in the notice of said motion except for plaintiff's requests for an order disqualifying the attorneys of record for the defendants Ancorp, Inc., American News Company, Inc. and Union News Company, Inc. and for an order permitting plaintiff to continue the prosecution of this action free from the effect of any order staying

proceedings against defendant Ancorp,Inc. in any court which was made in proceedings in this Bankrupcy Court by Honorable Edward J. Ryan in a proceeding instituted by the filing of a petition for an arrangement pursuant to Chapter 11 of the Federal Bankrupcy Laws.

2. The only relief sought against the News directly is a request that the Court order the News to produce for examination before trial one Archie Gordon, alleged by plaintiff to be an employee of the News.

3. On a number of previous occasions the attorney for plaintiff has made both written and oral requests that the News produce Mr. Gordon for oral examination. This firm wrote to plaintiff's attorney on three different occasions, in each case pointing out that Mr. Gordon is an employee the News was not required to produce for examination before trial and would not do so. In each communication it was pointed out that plaintiff's proper course of action would be to serve a notice of examination before trial and a subpoena upon Mr. Gordon.

4. Extracts of letters from this firm dated, respectively November 28, 1973, December 7, 1973 and December 13, 1973 are set forth in Schedule A which is annexed to and made a part of this affidavit as Exhibit A. These extracts contain the entirety of the responses of this firm to plaintiff's attorney's request that the News produce Mr. Gordon. I understand that plaintiff's attorney has requested this Court to direct the News to produce Mr.

Gordon at the pre-trial conference held on March 21, 1974 but that this Court refused to do so. A brief memorandum of law is being filed simultaneously with the filing of this affidavit which memorandum, we believe, demonstrates that, without question, the News is not obligated to produce Mr. Gordon and that the proper procedure for plaintiff's attorney to follow is to subpoena Mr. Gordon as a witness.

5. In addition to Mr. Gordon, plaintiff's attorney seeks an order directing Willy Levine and William McCullogh to submit to examinations before trial. Mr. McCullogh is claimed by plaintiff to be the president of American News Company, Inc. and Mr. Levine is claimed to be an "employee or former employee" of defendant Ancorp, Inc.

6. We assume that as in the case of Mr. Gordon, plaintiff's attorney is in practical effect seeking an order requiring American News Company, Inc. and Ancorp, Inc. to produce Mr. Levine and Mr. McCullogh for examination before trial. Since we represent neither of these defendants we do not take any legal position with respect to the procedure being followed by plaintiff's attorney to compel these two individuals to testify.

7. The Court's attention is drawn to the fact that on February 28, 1974 this Court conducted a conference for counsel in this action out of which emerged a schedule for the completion of discovery proceedings. At that hearing this Court made an oral order that April 12, 1974 would be the last day to complete

discovery, including all depositions. Although plaintiff's attorney did not attend the conference before Judge Carter on February 28, 1974 he was sent a letter from this firm dated February 28, 1974 advising him of the oral order made by Judge Carter at the conference conducted that morning. A copy of this firm's letter to plaintiff's attorney is annexed to and made a part of this affidavit as Exhibit B. This Court's February 28, 1974 oral order was reaffirmed at the March 21, 1974 pre-trial conference at which counsel for all parties were present.

8. Since February 28, 1974 plaintiff has served interrogatories on the News, answers and objections to which are now being prepared and will be shortly served and filed. We do not contend that because plaintiff's attorney served the interrogatories less than 30 days before April 12, 1974 that he is not entitled to answers because his late service did not give the News the 30 days to answer or object (which period it is entitled to under the Federal Rules of Civil Procedure). It was and is our view that the service of interrogatories by plaintiff's attorney on April 4, 1974 was in response to Judge Carter's oral direction with respect to the completion of discovery forthwith so that this case may be readied for trial, and the News will respond accordingly.

9. However, quite aside from our objection to the procedure being followed by plaintiff's attorney in connection with his effort to conduct an oral examination before trial of Mr. Gordon, we vigorously oppose that portion of plaintiff's motion which seeks an order directing further examinations before trial in this action.

10. If plaintiff's attorney had desired to take the deposition of Mr. Gordon, Mr. McCullogh or Mr. Levine all he need have done in order to conduct and complete those depositions before April 12, 1974 was to notice the depositions immediately upon receipt of this firm's letter of February 28, 1974. He made no effort to do this and instead waited until virtually the last moment to file the within motion.

11. This firm advised plaintiff's attorney's "associate counsel" William Klein, Esq. that it intended to make a motion for summary judgment in this case. That advice was given to Mr. Klein when he served Interrogatories on this firm on April 4, 1974. Plaintiff's current motion followed fast on the heels of our advice to Mr. Kein and seems calculated to frustrate, or at the very least inhibit, the making of a motion for summary judgment.

12. The affidavit of plaintiff's attorney is devoid of any kind of showing that the testimony of Mr. Gordon, Mr. McCullogh or Mr. Levine is necessary to the prosecution of plaintiff's claim. Certainly, if plaintiff is to be permitted further discovery at the 11th hour in this lawsuit, when it has had more than a month and a half to notice and conduct the very depositions it now seeks permission to take then plaintiff should be required to make an express showing of the nature of the testimony it expects to elicit from the parties it seeks to examine and the materiality of that testimony to the claims in its complaint.

Mark D. Geraghty

Sworn to before me this
16th day of April, 1974

John C. Scannell
Notary Public

JOHN C. SCANNELL
NOTARY PUBLIC, State of New York
No. 31 1507765
Qualified in New York County
Commission Expires March 30, 1975

NEWS' ANSWERS TO PLAINTIFF'S INTERROGATORIES
OF MAY 3, 1974

Rec'd	
[illegible] M	5/3/74
[illegible]	5/10/74
[illegible]	5/[illegible]
[illegible]	
LY	ACS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,	:	71 Civ. 1211
Plaintiff,	:	ANSWERS TO INTERROGATORIES 1, 2, 3, 5 (PARTIAL), 6 (PARTIAL), 7 (PARTIAL), 13 (PARTIAL), 14 (PARTIAL), 17, 18, 19, 21, 22 (PARTIAL), 23 and 24 (PARTIAL) of INTERROGATORIES OF PLAINTIFF SERVED APRIL 3, 1974
- against -	:	
NEW YORK NEWS, INC., HARRY GARFINKLE, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC. and ANCORP, INC.,	:	
Defendants.	:	

Defendant New York News Inc. by its Chairman of the Board, Francis M. Flynn answers interrogatories 1, 2, 3, 5 (partial), 6 (partial), 7 (partial), 13 (partial), 14 (partial), 17, 18, 19, 21, 22 (partial), 23 and 24 (partial) of plaintiff's interrogatories served April , 1974, as follows:

INTERROGATORY 1: As to defendants status as a corporation, state:

(a) the state in which it was incorporated,

(b) the place where incorporated,

(c) the date when incorporated,

(d) the amount of capitalization at time of incorporation.

ANSWER:

(a) State of New York,

(b) same as answer to 1(a)

(c) May 21, 1919

(d) $500,000

INTERROGATORY 2: Your full name, address,titles held by you as an officer, or director every year since 1963.

ANSWER:

(i) The full name and home address of Francis Flynn are respectively, Francis M. Flynn, 4 Priory Lane, Pelham Manor, New York,

(ii) Mr. Flynn's titles as an officer and director of defendant New York News, Inc. ("News") since 1963 have been (a) a member of the Board of Directors for the entire period, (b) President of the News until May, 1970 and (c) Chairman of the Board of the News since May 1970.

INTERROGATORY 3: State the principal business of defendant New York News, Inc., whether defendant is engaged in any ancillary business, and if so, for each other business, state,

(a) the nature and extent of such business,

(b) the dates or dates of existence of each,

(c) when each such business was acquired,

(d) the form of the organization,

(e) the names of officers and directors of such businesses or organizations.

ANSWER:

(i) the principal buisness of the News is the publication of daily and Sunday newspapers know respectively as the "Daily News" and the "Sunday News",

(ii) the News is engaged in business activities other than the publication of the newspapers described in (i). For

the purpose of the answer to Interrogatory 3 only the word ancilliary shall be deemed to mean business activities conducted by the News, either directly or through subsidiary corporations, other than publication of the newspapers described in (i). All of the ancilliary business of the News is conducted through subsidiary corporations. The News conducts the following ancilliary businesses:

(x) the operation of (a) a television broadcasting station and (b) an FM radio station in New York City,

(y) the operation of an AM radio station in Bridgeport, Connecticut,

(z) the stevedoring and trucking of newsprint in New York City,

(xx) the distribution of newspapers and magazines in parts of Westchester and Putnam Counties in the New York State and Fairfield County in the State of Connecticut.

(a) see the facts set out in 3(ii) above,

(b) as to the business described in 3(ii)(x)(a) since June 15, 1948; as to the business described in 3(ii)(x)(b) since October, 1964; as to the business described in 3(ii)(y) since March 16, 1967; as to the business described in 3(ii)(z) since October 16, 1961; as to the business described in 3(ii)(xx) since March 31, 1972.

(c) each of the businesses described in 3(ii) above was commenced or acquired on the respective dates set forth in (b) above.

(d) the businesses described in 3(ii) above are operated by the following corporate entities of which the News owns directly or indirectly all of the outstanding stock:

(i) as to the business described in 3(ii)(x) - WPIX, Inc.,

(ii) as to the business described in 3(ii)(y) - Connecticut Broadcasting Company, Inc.,

(iii) as to the business described in 3(ii)(z) - Daniels & Kennedy, Inc.,

(iv) as to the buisness described in 3(ii)(xx) - Gaynor News Company, Inc., and its wholly owned subsidiaries, The Standard News Company Inc. and the Unity News Company.

(e) the names and directors of the corporations described in 3(d) are as follows:

(i) WPIX, Inc.,

OFFICERS

Chairman of the Board	F. M. Flynn
President	Fred M. Thrower
Executive Vice President	Leavitt J. Pope
Sr. Vice President-Finance	T. E. Mitchell
Sr. Vice President	Richard N. Hughes
Vice Presidents:	Hendrik Booraem, Jr. William L. Cooper, Jr. Otis S. Freeman Lewis W. Brown James P. McCann Miss Jane Paine

Treasurer	T. E. Mitchell
Assistant Treasurer	R. J. Rohrbach
Secretary	Leavitt J. Pope
Assistant Secretaries	W. N. Clark V. E. Palmer
Controller	John P. Healy

DIRECTORS

Hendrik Booraem, Jr.	Richard N. Hughes
Raymond Colonari	James P. McCann
William L. Cooper, Jr.	T. E. Mitchell
F. M. Flynn	Leavitt J. Pope
Otis S. Freeman	Fred M. Thrower

(ii) Connecticut Broadcasting Company, Inc.,

OFFICERS

Chairman of the Board	F. M. Flynn
President	Fred M. Thrower
Executive Vice President	Leavitt J. Pope
Vice President	Raymond Colonari
Treasurer	T. E. Mitchell
Secretary	Leavitt J. Pope
Assistant Secretary	T. E. Mitchell

DIRECTORS

W. David Bodge	T. E. Mitchell
Raymond Colonari	Leavitt J. Pope
F. M. Flynn	Fred M. Thrower

(iii) Daniels & Kennedy Inc.,

OFFICERS

President	A. F. Schucht
Vice President	J. A. Kennedy
Treasurer	R. J. Rohrbach
Secretary	V. E. Palmer
Assistant Secretary	J. P. Hewitt
Controller	R. J. Rohrbach

DIRECTORS

J. P. Hewitt	V. E. Palmer
W. H. James	R. J. Rohrbach
J. A. Kennedy	A. F. Schucht

(iv) Gaynor News Company, Inc.,

OFFICERS

Chairman of the Board	J. E. Underwood
President	J. B. Gaynor
Vice Presidents:	Leon Braunstein W. A. Carey Frank Hantke
Treasurer	R. J. Rohrbach
Assistant Treasurer	C. J. Hickey
Secretary	V. E. Palmer
Assistant Secretary	C. J. Hickey
Controller	Leon Asche

DIRECTORS

W. A. Carey	B. G. McCauley
J. B. Gaynor	V. E. Palmer
W. H. James	R. J. Rohrbach
	J. E. Underwood

INTERROGATORY 5: As to the acquisition of Gaynor News Company:

(h) what type of business was Gaynor News,

(i) what territory did it make distribution of magazines and or newspapers,

(j) did Gaynor News distribute the New York News Inc. "News" daily and Sunday.

ANSWER:

(a) with respect to Interrogatory 5(h), see paragraph (xx) of the answer to Interrogatory 3

(b) with respect to Interrogatory 5(i), see (a)

(c) with respect to Interrogatory 5(j), yes, during the period from January 1971 to March 1972.

INTERROGATORY 6: As to any other companies the "News" acquired or controlled that distributed newspapers daily and Sunday,

(a) names of such companies or organizations,

(b) names of officers of such companies,

(c) dates of such acquisitions or associations.

ANSWER: During the period from January 1971 to date defendant, the News, has not acquired nor has it controlled (except for Gaynor News Company, and its subsidiaries) and corporations or other business entities engaged in the business of distributing newspapers daily and Sunday.

INTERROGATORY 7: As to companies that distribute the "News" daily and Sunday,

(a) name all companies so engaged,

(b) was Gaynor News one of those companies,

(c) was Union News Company one of those companies,

(d) names of places, states where "News" was distributed,

(e) number of copies of "News" so distributed, daily and Sunday.

ANSWER:

(a) for the period from January 1971 through March, 1972 the following companies distributed the Daily News and Sunday News in the New York Metropolitan area: See Schedule A attached hereto,

(b) yes,

(c) no

(d) for the period from January 1971 through March 1972 the Daily News and Sunday News was distributed in all states of the United States of America and in the following foreign countries:

(i) Canada

(ii) Belgium

(iii) Bermuda

(iv) British West Indies

(v) England

(vi) Germany

(vii) Greece

(viii) Holland

(ix) Iceland

(x) Italy

(xi) Mexico

(xii) Spain

(e) (i) the approximate daily circulation of the Daily News during the period from January 1971 to March 1972 was 2.25 million,

(ii) the approximate Sunday circulation of the Sunday News during the period from January 1971 to March 1972 was 3.27 million.

INTERROGATORY 13: As to a letter dated March 16, 1971 written by Townley,Updike, Carter & Rodgers Esqs. to the Daily Mirror at 42-15 Crescent Street, Long Island City, N.Y. 11101

(a) are you familiar with the contents of such letter same questions as in paragraph 12, b-c-d-e-f-g-h-i-j

[The relevant subsections of Interrogatory 12 are as follows]:

(b) were you consulted before that letter was sent,

(c) did you approve of that letter being mailed,

(d) if not you who approved who at the "News" approved,

(e) was there a reply to that letter ever received,

(f) did Townley, Updike, Carter & Rodgers Esqs. ever take any steps towards its statement "appropriate action will be taken to restrain any infringing or unfairly competing us,"

(i) was a meeting of the directors called upon this matter and question?

ANSWER:

(a) no,

(b) no,

(c) no,

(a) I do not know who, if anyone, approved the letter referred to in this Interrogatory,

(e) no reply was received by the News,

(f) I am advised that no legal proceedings were instituted by Townly, Updike, Carter & Rodgers,

(i) no.

INTERROGATORY 14: State what "News" policy steps were taken, one by one, by you or anyone at the "News", officers directors or owners or employees from the date of the purchase of the "Mirror" by the "News" from the years 1963-1964 through 1971 and after the publication of the plaintiff's publication in 1970,

(b) what changes if any were made at the "News" due to the publication of the "Daily Mirror" the plaintiff herein?

(e) did you consider that the Daily Mirror in its format and size and photographs was a competitor and a threat to the circulation of the "News" and its advertising contracts?

(f) in your capacity as an executive and having been with the "News" for a long period of time, would you state that it, the "Daily Mirror", was a tabloid in the morning field just as was the "News"?

ANSWER:

(b) none,

(e) to the extent that newspapers are distributed

and sold within the same areas they are all competitors with one another. I never considered the Daily Mirror, in particular, as as competitor which was a threat to the circulation of the News and its advertising contracts,

(f) the News is a tabloid newspaper and, the Daily Mirror was a tabloid newspaper. However, I would not state that "the Daily Mirror was a tabloid in the morning field just as was the News."

INTERROGATORY 17: Did you or anyone else at the "News" order any investigation to be conducted as to the activities of the Daily Mirror?

(a) its circulation, its distribution, its wholesalers?

(b) its financial structure?

(c) where it was printed?

(d) its press run?

(e) its staff, editors, sports department?

ANSWER: I never ordered any such investigations and I am not aware of any such investigations being ordered by any other officers or employees of the News.

INTERROGATORY 21: Are you familiar with the contents of the Complaint in this action?

ANSWER: I am not familiar with the contents of the complaint of this action but I had been apprised of the nature of the claims asserted by plaintiff.

INTERROGATORY 22: Were you consulted by the law firm representing the "News" before they sent the letters of March 16th 1971 and August 31, 1965.

(a) if not do you know who at the "News" was consulted?

ANSWER: I was not consulted with respect to the March 16, 1971 letter referred to in Interrogatory 22 and I do not know who, if anyone, at the News was consulted.

INTERROGATORY 23: Did you confer in relations to the Daily Mirror starting publication in 1970 or prior to that time with any office managers, or principals of the American News Company Inc., Union News Company Inc. or Ancorp Inc. Gaynor News, Newark News Suppliers, Albany News Company, Greater Boston News Company.

(a) were there any letters written on this subject?

(b) were there any phone calls made on this subject?

(c) were there any meetings held on this matter?

(d) If so, will you give us the documents, dates and names of any such individuals with whom you had such contact?

ANSWER: I did not engage in any conferences of the nature described in Interrogatory 23.

INTERROGATORY 24: Do you know Henry Garfinkle; William McCoullough, Willie Levine, Jimmy Gaynor, Archie Gordon, Sol Giglio? What oral, written conversations between you, 1970-1973?

ANSWER: I know Henry Garfinkle and Jimmy Gaynor. I do not know the other persons named in Interrogatory 24.

I have had no communications, orally or in writing, with Mr. Garfinkle or Mr. Gaynor in connection with any matters relating to the Daily Mirror.

Francis M. Flynn

NEWS' ANSWERS TO PLAINTIFF'S INTERROGATORIES dsa 73
OF MAY 3, 1974

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

FRANCIS M. FLYNN, being duly sworn upon his oath deposes and says:

1. I am the Chairman of the Board of New York News, Inc., a corporation and defendant in the above-entitled action, and I am the agent of that corporation for the purpose of answering the interrogatories served upon the corporation by plaintiff Daily Mirror, Inc. on April 3, 1974 and for making this verification.

2. I have read the said interrogatories and the foregoing answers thereto are true according to the best of my knowledge and belief.

Francis M. Flynn

Sworn to before me this 3 day
of May, 1974

Mary C. Cannon
Notary Public

MARY C. CANNON
Notary Public, State of New York
No. 41-5510000 Queens County
Certificate filed in New York County
Commission Expires March 30, 1976

SCHEDULE A

1. The New York News Inc. distributes the News daily and Sunday in the five boroughs of New York City.

2. The following are the names of the companies that distribute the News daily and Sunday in the greater metropolitan New York area:

a) Union County Newsdealers Supply Co.

b) New Brunswick Newsdealer Supply Co.

c) Jersey Coast News Co.

d) Brauninger News Co.

e) Newark Newsdealers Supply Co.

f) Passaic Co. News Co.

g) Peekskill NY

h) Rockland News Agency, Inc.

i) Consolidated District Inc.

j) Gaynor News Company, Inc.

k) Standard News Company, Inc.

ORDER OF JUDGE CARTER DATED NOVEMBER 15, 1974 DENYING PLAINTIFF'S MOTION FOR FURTHER DISCOVERY dsa 75

BAILE MILROF INC.,

Plaintiff

-against-

NEW YORK NEWS INC., HARRY GARFINKLE, AMERICAN NEWS COMPANY INC., UNION NEWS COMPANY, INC., ANCORP Inc.

Defendants

NOTICE OF MOTION

ROBERT W. FARRELL

Attorney for Plaintiff

Office and Post Office Address, Telephone

67 Park Avenue
New York City, N.Y. 10016
516-248-8245

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

1 - 14

Motion denied except there now appears to be no barrier to this action by virtue of the stay ordered in the bankruptcy action.

Robert L. Carter
U.S.D.J.



Motion denied except there now appears

to be no barrier to this action by virtue of the stay

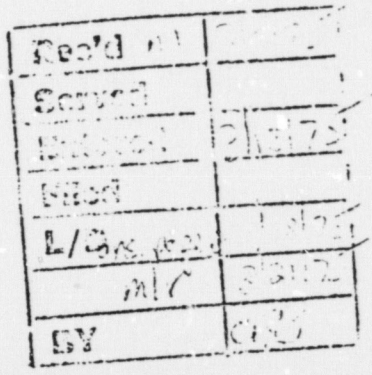
ordered in the bankruptcy action.

/s/ Robert L. Carter
U.S.D.J.

Mrs. Gwendolyn E. Wilson
Secretary to Judge Carter
791-0959

dsa 76

PLAINTIFF'S NOTICE OF MOTION
MARCH 4, 1975 FOR FURTHER DISCOVERY



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

DAILY MIRROR INC.,

Plaintiff

-against-

NEW YORK NEWS INC.,HARRY GARFINKLE AMERICAN NEWS CO.,INC.,UNION NEWS CO.,INC.,and ANCORP,INC..

Defendants
----------X

71 CIV 1211

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE,that upon the annexed affidavit of Robert W.Farrell sworn to the 4th day of March 1975,and the Notice of Motion heretofore served upon you and filed with the Court dated April 8th,1974 and made returnable on April 18th,1974, and the supporting papers thereto annexed,and upon the Order of Hon.Judge Edward J.Ryan,Bankruptcy Judge,lifting the omnibus stay heretofore entered in bankruptcy proceeding entitled in re:ANCORP, Inc.,for Chapter XI proceeding Debtor herein,made and entered on the 17th day of November 1974 and the endorsement filing made thereon,by Hon. Judge Robert L.Carter,dated November 18th,1974, and the letter of the District Judge herein dated October 10,1974, authorizing the resumption of proceedings herein,free and clear of said stay,if when and as lifted,

The undersigned will renew his aforesaid application, at the Courthouse,Foley Square,United States District Court,South-

ern District of New York, on the 21st day of March 1975 at 9:30 in the forenoon or as soon as counsel made be heard,made returnable April 17th,1974,as made for the taking of depositions as recited in said Notice of Motion,now that the said omnibus stay has been duly ordered lifted so as to permit the resumption of the within action,up to the entry of judgment herein ,and for the fixing of expeditious dates for each witness' orderly examination,and for ruling of the District Judge as to plaintiff's demand for the disqualification of Roy M.Cohen,Esq.,and his law firm from acting for any of the defendants,on grounds as alleged,and for such other and further relief as may be fitting herein.

Dated: March 4th,1975

New York,N.Y.

Yours,etc :

ROBERT W.FARRELL
Attorney for the Plaintiff
67 Park Avenue
New York,N.Y. 10016
516-248-8245

TO: Townley ,Updike,Carter,
and Rogers Esqs.
220 East 42nd Street
New York City,N.Y.10017

Barret W.Kreisberg Esq.
104 East 40th Street
New York,N.Y. 10016

Saxe,Bacon,Bolan,& Manley Esqs.
39 East 68th Street
New York,N.Y.

Plaintiff

-against-

Defendants

NOTICE OF MOTION

ROBERT W. FARRELL

Attorney for Plaintiff

Office and Post Office Address, Telephone

67 Wall Street
New York, N.Y. 10016
212-248-8245

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

SOUTHERN DISTRICT OF NEW YORK

dsa 79

LETTER OF MARK D. GERAGHTY, ESQ., TO ROBERT W. FARRELL, ESQ., DATED MAY 16, 1975

May 16, 1975

Robert W. Farrell, Esq.
110 Old Country Road
Mineola, New York 11501

Re: Daily Mirror, Inc. v. New York News Inc., et al.

Dear Mr. Farrell:

Pursuant to the undertaking made in my letter to Judge Frankel dated April 29, 1975 I have caused a review to be made of the minutes of meetings of the Board of Directors of the New York News Inc. from the period 1965 to 1972 to determine if those minutes contain any reference of any nature whatsoever to the Daily Mirror, Inc. or the newspaper published by that company.

While we undertook to file an affidavit setting forth the results of our examination of the minutes of directors meetings of the New York News Inc. and will do so prior to the submission of our motion for summary judgment, I thought it would be appropriate to inform you that our investigation disclosed no reference of any nature whatever in the minutes of directors meetings of the New York News Inc. to either the Daily Mirror or the newspaper published by that company. I thought you would want to have this information in connection with your preparation of answering papers to our motion for summary judgment.

I have examined the zeroxed copy of the acquisition agreement between the Hearst Corporation and the New York News Inc. which you returned to us under your letter dated May 3, 1975. I note that the Xerox copy which was returned to us included a last page which apparently did not reproduce

in an adequate manner so that it is not fully legible. In consequence I am delivering to you with this letter a reproduced copy of the last page of a conformed copy of the acquisition agreement which is the best we have been able to do. Since it is still partly illegible, I am also enclosing a zeroxed copy of the original signature page of the acquisition agreement.

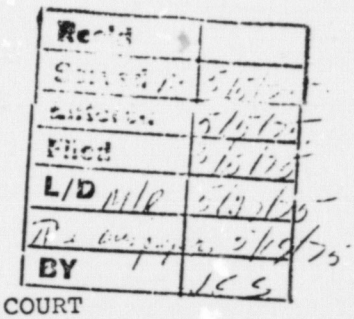
Sincerely,

MDG/cs

Mark D. Geraghty

Enclosures

NEWS' NOTICE OF MOTION
MAY 5, 1975 FOR SUMMARY
JUDGMENT



dsa 81

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

DAILY MIRROR INC.,

Plaintiff,

- against -

NEW YORK NEWS, INC., HARRY GARFINKLE, AMERICAN NEWS COMPANY, INC., UNION NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

- -X

"For Referral to Judge Frankel After Docketing"

Index No. 71
Civ. 1211 (MEF)

NOTICE OF MOTION

S I R :

PLEASE TAKE NOTICE that upon the pleadings, the annexed affidavits of Mark D. Geraghty, Esq., sworn to May 5, 1975, Daniel Rauch, sworn to May 5, 1975, James J. Lynch, sworn to May 2, 1975, Archie Gordon, sworn to May 2, 1975, and Jeffrey A. Shuman, Esq., sworn to May 1, 1975, together with the Appendix of Exhibits annexed hereto, and upon all papers filed in this action and upon all prior proceedings had herein, the undersigned will move this Court before the Honorable Marvin E. Frankel at Room 2002 of the United States Courthouse at Foley Square, New York, New York, on the 27th day of May, 1975, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56(e) of the Federal Rules of Civil Procedure, granting to defendant New York News, Inc., summary judgment dismissing the complaint.

PLEASE TAKE FURTHER NOTICE that by order of the

NEWS' NOTICE OF MOTION
MAY 5, 1975 FOR SUMMARY JUDGMENT

dsa 82

Honorable Marvin E. Frankel, dated April 24, 1975, plaintiff is required to serve on the undersigned, by no later than 5:00 o'clock in the afternoon of May 19, 1975, answering papers, if any, in opposition to this motion.

Dated: New York, New York
May 5, 1975

Yours etc.,

TOWNLEY, UPDIKE, CARTER & RODGERS

By _____
A Member of the Firm
Attorneys for Defendant, New York News, Inc.
220 East 42nd Street
New York, New York 10017
(212) 682-4567

TO:

Saxe, Bacon, Bolan & Manly
Attorneys for Defendant, Ancorp National Services, Inc.
39 East 68th Street
New York, New York 10021

Barret G. Kreisberg, Esq.
Attorney for Henry Garfinkle
104 East 40th Street
New York, New York 10016

Robert W. Farrell, Esq.
Attorney for Plaintiff
67 Park Avenue
New York, New York 10016

dsa 83

NEWS' STATEMENT PURSUANT TO LOCAL RULE 9(g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

DAILY MIRROR, INC.,

Plaintiff,

- against

NEW YORK NEWS, INC., HARRY GARFINKLE AMERICAN NEWS COMPANY, INC., UNION NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

- -X

Index No. 71
Civ. 1211 (MEF)

DEFENDANT, NEW YORK NEWS, INC.'S STATEMENT FILED PURSUANT TO RULE 9(g) OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Pursuant to Rule 9(g) of the General Rules of this Court defendant New York News, Inc. submits the following statement of material facts as to which there is no genuine issue to be tried, in support of its motion for summary judgment dismissing the complaint pursuant to Rule 56 of the Federal Rules of Civil Procedure.

1. During the period beginning on January 4, 1971 and continuing until March 4, 1972 plaintiff published a daily tabloid newspaper entitled the "Daily Mirror" which was distributed and sold principally in the City of New York.

2. Defendant New York News, Inc. was at all times relevant to the allegations in the complaint and presently is engaged in the publication of a daily newspaper known as the "Daily News" and a Sunday newspaper known as the "Sunday News" which was and is distributed and sold in the City of New York and throughout the United States.

NEWS' STATEMENT PURSUANT TO LOCAL RULE 9(g)

3. Defendant Ancorp National Services, Inc. was at all times relevant to the complaint and is engaged in the distribution of various newspapers, periodicals and other publications from newsstands to the general public in New York City and in various other places in the United States.

4. Defendant Henry Garfinkle was at all times relevant to the allegations of the complaint the chief executive and chief operating officer of Ancorp National Services, Inc.

5. During the period of approximately six days from the date of its initial publication on January 4, 1971 the Daily Mirror was sold from certain newsstands of Ancorp National Services, Inc. in the City of New York. The sale from certain newsstands of Ancorp National Services, Inc. was thereafter discontinued.

6. No officer, director, representative, agent or employee of defendant New York News, Inc. (a) engaged in any correspondence or other communication of any nature whatever with any officer, director, representative, agent or employee of any other defendant or with defendant Henry Garfinkle or any other person or entity or (b) did any act either singlely or jointly with any other person or entity which had the purpose or effect of causing the removal of the Daily Mirror from any newsstands of Ancorp National Services, Inc.

7. No officer, director, representative, agent or employee of defendant New York News, Inc. engaged in any

correspondence or other communication of any nature whatever with any officer, director, representative, agent or employee of any other defendant or with defendant Henry Garfinkle concerning any matters of any nature whatsoever relating to the Daily Mirror except for a single conversation between Jack Underwood, an officer and director of New York News, Inc. with defendant Henry Garfinkle which conversation occurred subsequent to the removal of the Daily Mirror from the newsstands of Ancorp National Services, Inc. The sole reference in that conversation to the Daily Mirror was an inquiry by Mr. Underwood as to the reason for the removal of the Daily Mirror from the newsstands of Ancorp National Services, Inc.

8. The New York News, Inc. did not itself or in combination with any other person or entity nor did it cause any other person or entity to:

(a) destroy the Daily Mirror or drive it out of business;

(b) surpress or eliminate competition between and among other newspapers and publications concerning the general public;

(c) create a monopoly in the dissemination of the news;

(d) cause any persons not to distribute the Daily Mirror to any newsstands or other distribution points serviced or controlled by Ancorp National Services, Inc. or any other persons or to cause any persons not to sell the Daily Mirror from any newsstands or other distribution points.

(e) exert any pressure on any other persons or any individuals or firms to refrain from carrying the Daily Mirror or to refrain from advertising in the Daily Mirror.

NEWS' STATEMENT PURSUANT TO LOCAL RULE 9(g)

(f) cause any copies of its newspapers to be distributed to any distribution places in order to eliminate the distribution and sale of the Daily Mirror or to divert any portion of the Daily Mirror's circulation.

(g) attempt to divert or in fact did divert any advertising which might have been placed in the Daily Mirror.

Dated: New York, New York
May 5, 1975

TOWNLEY, UPDIKE, CARTER & RODGERS
Attorneys for Defendant, New York News, Inc.
220 East 42nd Street
New York, New York 10017
(212) 682-4567

TO:

Robert W. Farrell, Esq.
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67 Park Avenue
New York, New York 10016

Barret G. Kreisberg, Esq.
Attorney for Henry Garfinkle
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Saxe, Bacon, Bolan & Manley
Attorneys for Defendant Ancorp National Services, Inc.
39 East 68th Street
New York, New York 10021

AFFIDAVIT OF MARK D. GERAGHTY, ESQ., IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

DAILY MIRROR INC.,

Plaintiff,

- against -

NEW YORK NEWS INC., HARRY GARFINKLE AMERICAN NEWS COMPANY, INC., UNION NEWS COMPANY, INC., and ANCORP, INC.

Defendants.

AFFIDAVIT IN SUPPORT OF DEFENDANT NEW YORK NEWS, INC.'S MOTION FOR SUMMARY JUDGMENT

Index #71 Civ. 1211 (MEF)

- -X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MARK D. GERAGHTY, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the Courts of the State of New York and in this Court. I am a member of the firm of Townley, Updike, Carter & Rodgers, attorneys for defendant, New York News, Inc. (the "News") and am familiar with all proceedings had heretofore in the within action. This affidavit is made in support of a motion brought by the News for summary judgment dismissing the complaint pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure.

The Parties

2. This action was instituted by the filing of a summons and complaint on March 16, 1971. The plaintiff, Daily Mirror, Inc., was then publishing a morning newspaper known as

The Daily Mirror (the "Mirror"), having commenced publication of said newspaper on January 4, 1971. As the Court may know, a morning tabloid newspaper known as the "New York Mirror" was published in New York City from 1924 to October 1963. Daily Mirror, Inc., the plaintiff herein, is not connected or related in any way with New York Mirror, which was a division of the Hearst Corporation. On October 15, 1963, the News purchased certain assets of New York Mirror from the Hearst Corporation.

3. At all times relevant hereto defendant News has published a daily morning newspaper known as the "Daily News" and a Sunday newspaper known as the "Sunday News". The other defendants will be referred to collectively as the "Ancorp defendants". The corporate history of Ancorp National Services, Inc. sued herein as Ancorp, Inc. ("Ancorp"), is described in the accompanying affidavit of Jeffrey A. Shuman, Esq., Corporation Counsel for Ancorp. His affidavit shows that defendant American News Company, Inc. is the same entity as Ancorp. The name was changed to Ancorp in 1965. Defendant Union News Company, Inc. was formerly a subsidiary of Ancorp and was merged into Ancorp in 1967. Mr. Garfinkle was Ancorp's chief executive officer during 1970-72, the period relevant to the allegations in the complaint. At all relevant times Ancorp was in the business of selling newspapers from newsstands to the general public in the greater metropolitan area of New York and in other cities throughout the United States.

The Complaint

4. The complaint (a copy of which is included as

Exhibit A in an Appendix of exhibits being submitted herewith) contains five causes of action, claiming aggregate damages of $90,000,000, as follows:

(a) The first cause of action is alleged to arise out of "the anti-trust laws of the United States, more particularly the Sherman Anti-Trust Act, 15 USC Sections 1 and 2" and seeks actual damages of $10,000,000 trebled;

(b) The second cause of action is alleged to arise under "the Anti-Trust Laws of the State of New York, more particularly the Donnelly Anti-Trust Act, General Business Law Section 340" and seeks actual damages of $10,000,000.

(c) The third cause of action is alleged to arise under "the common law of the State of New York" and seeks actual damages of $10,000,000 and punitive damages of $20,000,000;

(d) The fourth cause of action is alleged to arise under "Section 1 of the Sherman Anti-Trust Act" and seeks actual damages of $5,000,000, trebled;

(e) The fifth cause of action is alleged to arise under "Section 1 of the Donnelly Anti-Trust Act" and seeks actual damages of $5,000,000.

5. Generally, the complaint alleges (¶8) that "commencing in or about January 1971" the defendants combined and conspired to restrain and monopolize trade and commerce in the dissemination of the news and newspapers. The object of the purported combination and conspiracy was to destroy the Mirror and drive plaintiff out of business by means of an alleged agreement not to distribute the Mirror at newsstands or other

outlets operated by the Ancorp defendants and to suppress and eliminate competition between newspapers, thus creating a monopoly in the dissemination of the news.

6. The complaint sets forth (¶11) what plaintiff contends were the steps taken to gain the object and purpose of their alleged conspiracy. It is alleged that defendants:

(a) Refused to carry plaintiff's newspaper and to distribute it to newsstands in New York City and elsewhere.

(b) Exerted pressure on those to whom defendants regularly distributed newspapers and periodicals to compel such persons to refrain from carrying the Mirror on their newsstands and to refrain from advertising in the Mirror.

(c) Sponsored and helped the News by distributing additional copies of the News in order to eliminate the distribution and sale of the Mirror, thereby depriving the Mirror of a "very substantial portion of its circulation".

(d) Attempted to divert and in fact diverted a "very substan- portion" of the advertising which might have been placed in the Mirror.

Plaintiff's Business

7. Plaintiff was incorporated in New York City pursuant to the laws of the State of New York in April, 1967, according to plaintiff's answers to Interrogatories served by the News on April 6, 1971. The Interrogatories are Exhibit B of the Appendix and the Answers are Exhibit C. Plaintiff's Chief Executive Officer, as well as its present attorney of record is Robert W. Farrell, Esq., who has stated that the plaintiff was capitalized

to the extent of $500,000 (Farrell affidavit of August 3, 1973, which is included in the Appendix as Exhibit D).

8. From plaintiff's answers to the April 6, 1971 Interrogatories it appears that plaintiff made an offering of its shares pursuant to an exemption provided for in the Securities Act of 1933, commonly known as a Regulation A offering. An offering circular (Appendix, Exhibit E) disseminated to the investing public at the time of the Regulation A offering disclosed the intended business of plaintiff to be the publication of a newspaper. The offering circular which, of course, is an instrument for selling securities, contained substantial information with respect to the contemplated business of plaintiff and set forth in detail the risks which investors would take in the event that they elected to purchase plaintiff's stock. Under the heading "Risk Factors" the public was told that plaintiff had previously started an unsuccessful newspaper and that Mr. Farrell (who was to be the newspaper's only officer with newspaper experience) had in the past had an executive association with newspapers which were involved in bankruptcy proceedings. Potential investors were also advised that the proposed newspaper would be in competition with two of the largest and most read papers in the world which had large experienced staffs and that in the seven years preceding the offering of plaintiff's securities established newspapers in New York had discontinued publication.

9. The offering circular also contained two other sections which are of significance to this action. One was entitled "Proposed Distribution" and the other "Advertising".

As to revenue from distribution and sale of newspapers, plaintiff carefully stated to prospective investors that although it did not anticipate any difficulty in obtaining distributors on satisfactory terms "the fact that a paper is being delivered to vendors gives no assurance that it will be sold to the consumer". With respect to advertising revenue, plaintiff forewarned prospective investors that it did not anticipate any significant revenues from advertising until its newspaper had a substantial circulation. The offering circular pointed out that there was no assurance that a substantial circulation would occur and that "general commercial advertisers do not usually utilize a newspaper as a media until it has achieved a fairly high level of circulation."

10. As far as I have been able to ascertain, the Mirror never was a member of any organization which compiled and published circulation data. As a result, it is virtually impossible to determine the actual circulation of the Mirror during its existence. In its answer to the News' April 6, 1971 Interrogatories, which answers were signed by Mr. Farrell as plaintiff's attorney, plaintiff appeared to contend that the Mirror's circulation was 180,000 copies per day. It should be noted, however, that plaintiff's answer is most confusing and we are interpreting the answer as liberally as possible for the purpose of this affidavit. This figure, however, is subject to question since Mr. Farrell himself, in an interview referred to in the September 25, 1971 New Yorker magazine, stated that the newspaper's press run (as opposed to circulation) was only 75,000 copies a day. A copy of the New Yorker article is Exhibit F of the Appendix. The only third-party estimate we have been able to find is an article published in the March 4, 1972 Editor and Publisher,

which placed circulation at approximately 50,000 copies a day (Appendix, Exhibit G), and this estimate would, in these circumstances, appear to be the most realistic. In any event, plaintiff's newspaper did not survive and discontinued publication on March 1, 1972.

Discovery Proceedings

11. Although the within action was instituted only a little more than two months after the Mirror first appeared on the newsstands at a time when the Mirror was still fighting for its existence, plaintiff failed to take a single step in the prosecution in this action for more than two years, and only acted when it appeared that the action might be dismissed for lack of prosecution.

12. Plaintiff's discovery proceedings have been as follows:

(a) The depositions of the following persons:

(i) Henry Garfinkle on July 30, 1973, October 19, 1973 and October 31, 1973;*

(ii) Jack E. Underwood, Vice President and Director of Sales of the News on July 30, 1973, October 5, 1973 and October 16, 1973;

(iii) Harry R. Kane, Assistant Circulation Sales Manager of the News on October 16, 1973;

(iv) James W. Rodgers, Esq., a member of my firm, on December 31, 1973;

* To the extent that we can obtain the cooperation of other counsel, executed transcripts of all depositions will be filed with the Clerk of the Court by the return date of the motion for summary judgment.

(v) Edward M. Maher, Esq., a member of my firm, on February 22, 1974;

(vi) Archie Gordon, the general manager of Gregg News Company, on April 7, 1975;

(vii) Willie Levine, presently an employee of Ancorp National Services, on April 15, 1975;

(viii) William McCollough, president of Ancorp, on April 15, 1975;

(b) Interrogatories directed to "Francis Flynn and/or James J. Lynch" of the News on April 4, 1974. Answers by Mr. Flynn and objections to said interrogatories were served on plaintiff on May 3, 1974. A copy of the answers (which includes the interrogatories) is attached to the Appendix as Exhibit H.

(c) Documents marked for identification in the course of the depositions. Copies of all fourteen documents so marked are attached to the Appendix as Exhibit I. Additionally this firm disclosed certain information in memorandum and letter form in response to requests for information made by plaintiff's counsel in the course of the depositions. Copies are attached to the Appendix as Exhibit J.

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13. Discovery by the News has consisted of two sets of interrogatories, the one of April 6, 1971, previously referred to, and a second set of interrogatories served February 4, 1974. A copy of the February 4, 1974 Interrogatories is annexed as Exhibit K to the Appendix, and a copy of the Answers is Exhibit L. The April 6, 1971 Interrogatories, which were 22 pages in length,

were not answered until July 31, 1973, and then under threat of dismissal of the action for lack of prosecution. The answers are two pages in length. In view of the fact that plaintiff claimed it had no information in its possession to support the allegations of its complaint, we conducted no further discovery other than the two sets of interrogatories.

The Results of Discovery

14. The interrogatories served by this firm had the purpose of seeking from plaintiff all facts within plaintiff's knowledge which would support its claim that the News was involved in a conspiracy to violate the anti-trust laws, and more specifically that such effort was being attempted through the disruption of the distribution of the Mirror and the diversion of advertising from that paper. A review of plaintiff's answers to the interrogatories discloses that plaintiff stated unequivocally on two occasions that it had no independent information which would support any of the material allegations of wrongdoing in its complaint.

15. Interrogatories 6 through 29 of the April 6, 1971, were addressed to the aspects of the alleged conspiracy. In Interrogatory 6 plaintiff was asked to supply the date the alleged combination and conspiracy began. The response was "App. 1970 (ca)".

16. In Interrogatory 7 plaintiff was asked to state the periods during which plaintiff claimed each defendant was involved in the alleged conspiracy. Plaintiff's response in paragraphs 7 of its answer was:

> "Plaintiff is unable to answer, requiring being furnished by the defendants with the information by means of an examination before trial of the defendant; the allegations of the complaint in

> their very nature being dependent upon such information now in the exclusive possession of the defendant."

With respect to Interrogatories 8 through 28 plaintiff's response was merely "Ditto".

17. Interrogatory 29 requested the identity of witnesses to be called at trial, the dates and places of interviews of such potential witnesses and any memoranda which reduced such interviews to writing. Plaintiff responded: "Unknown at this time; and not related to the complaint as such."

18. Thus, plaintiff, in its answers to the first set of Interrogatories stated, in essence, that it was not aware of any facts to support the central allegations of its complaint and would have to obtain such information from defendants.

19. On February 4, 1974, this firm served a second set of interrogatories (Exhibit K in the Appendix). Plaintiff's answers (Exhibit L) were served after the completion of all depositions other than those conducted during the last month. Interrogatories 3 through 25 of the February 4, 1974 Interrogatories are virtually identical to Interrogatories 6 through 29 of the April 6, 1971 Interrogatories.

20. The responses to virtually all of the Interrogatories were essentially the same, i.e., words to the effect that the information sought was in the "exclusive possession" or "exclusive knowledge" of the defendants. The only exceptions to this pattern (excluding responses where plaintiff either supplied information which was not responsive to the question posed or

where the response was nothing more than a conclusory statement) were in the following instances:

(a) In Interrogatory 7 plaintiff was asked to identify the individuals and firms which plaintiff alleged in paragraph 8 of its complaint combined and conspired to violate the anti-trust laws and to supply certain particulars as to their involvement in the conspiracy. Plaintiff's response in paragraph 7 of its answer was:

> "Ancorp, Inc., Henry Garfinkle (Harry), Myron Garfinkle, Mrs. Garfinkle, American News Company Inc., Union News Co. Inc., Manhattan News Company, Gaynor News Company, Archie Gordon, Newark News Suppliers, Greater Boston Distributors, Willie Levine, William McCullough, Mr. Lynch, treasurer for the New York News, Inc., Jack Underwood, Harry Kane, "Sol" Giglio, amongst others."

No explanation of the nature of the involvement of the persons in the alleged conspiracy was furnished. Plaintiff has now taken the depositions of the majority of these individuals and has had an adequate opportunity to take the depositions of the remainder.

(b) In Interrogatory 9 plaintiff was asked if the defendants held meetings or conferences pursuant to the conspiracy and then was asked to give particulars of the conspiracy specifically, among other things, the names of those associated with the News who were involved. Plaintiff answered that there were meetings, and named Jack Underwood, Edward M. Maher, James Rodgers and Mr. Lynch "amongst others" as those associated with the News who were at said meetings. No further information was supplied in response to Interrogatory 9. Plaintiff has taken the depositions

of Mr. Underwood of the News and of Mr. Maher and Mr. Rodgers who are partners in my firm. Those depositions contain no testimony that any meetings in furtherance of any conspiracy occurred. Mr. Lynch is supplying a short affidavit denying involvement in any conspiracy and pointing out that he was in Chicago and no longer in the employ of the News at the time of the alleged conspiracy.

(c) In Interrogatory 13 plaintiff was asked the identity of all newspapers and other publications which plaintiff alleges defendants agreed not to distribute on newsstands and at distribution points serviced or controlled by defendants. Plaintiff's response was that the only competitor to the News was the Mirror.

(d) In Interrogatory 14 plaintiff was asked the identity of the newsstands and distributing points by defendants from which the Mirror was excluded. Plaintiff responded:

> "Many many newsstands, locally, nationally, and stands strategically located (airports, railroad terminals, hotels etc) and particularly approximately, numbering 650 Union News owned or leased stands, controlled by co-defendants Ancorp. Inc. et al."

However, it should be noted that in his deposition, Mr. Garfinkle stated (Garfinkle deposition pp. 49-50) that his companies operated only 110 newsstands in the New York metropolitan area and that in his deposition Mr. Underwood estimated there are approximately 10,000 to 13,000 retail outlets for newspapers in the metropolitan area (Underwood deposition p. 118).

(e) In Interrogatory 16(d) plaintiff was asked the identity of the various other parts of the State of New York and the United States in which plaintiff alleged in its complaint defen-

dants refused to distribute the Mirror. Plaintiff responded by naming the "Entire State of New York, New England, the entire United States and Canada."

21. Plaintiff's responses to both the April 6, 1971 and February 4, 1974 Interrogatories make it abundantly clear that, notwithstanding the requirements of Rule 11 of the Federal Rules of Civil Procedure, plaintiff had no evidence to support the general allegations of its complaint when it instituted this action, and, still had no such evidence by March of 1974. Subsequent thereto the extent of plaintiff's discovery has been to serve interrogatories addressed to Mr. Flynn or Mr. Lynch of the News, which have been answered by Mr. Flynn, and to take the depositions of Messrs. Archie Gordon, Willie Levine and William McCollough. The answers to plaintiff's interrogatories and the transcripts of the depositions described herein make it abundantly clear that plaintiff has failed to obtain any information from these sources which support the allegations of the complaint. Indeed, in his letter to the Court dated April 26, 1975 Mr. Farrell concedes again that he can only prove his case from the "mouths" of the defendants.

22. Most of the interrogatories which plaintiff addressed to Mr. Flynn or Mr. Lynch (Appendix, Exhibit H) related to the News' October 1963 acquisition of certain assets of the old New York Mirror (see paragraph 2, supra) and do not appear to have any significance with respect to proof of the alleged conspiracy. Interrogatory 23 inquired about conferring with "office managers or principals" of the Ancorp defendants and other news companies concerning the plaintiff starting publication of the Mirror in

1970 or prior thereto. Mr. Flynn, who was the Chairman of the Board of the News, answered that he did not engage in any such conferences. Plaintiff also asked (Interrogatory 24) if Mr. Flynn knew Henry Garfinkle, William McCollough, Willie Levine, Jimmy Gaynor, Archie Gordon or Sol Giglio and if Mr. Flynn had oral or written communications with them from 1970 to 1973. In answer, Mr. Flynn stated that he knew only Henry Garfinkle and Jimmy Gaynor but had no conversations or written communications with either of them relating to the Mirror.

23. It would serve no useful purpose to attempt to summarize all of the depositions taken by plaintiff, but we believe that no evidence of any kind supporting a conspiracy theory has been uncovered. A few highlights may warrant specific mention:

(a) In his deposition, Mr. Garfinkle was asked repeatedly if he ever talked to anyone at the News about the Daily Mirror. Mr. Garfinkle's testimony was that he did not recall having any such conversations in this regard and that during a conversation he had with Mr. Underwood on a subject completely unrelated to the Mirror Mr. Underwood asked why he was no longer distributing. This conversation took place after the Mirror had been removed from the Ancorp newsstands.

(b) In his deposition, Mr. Underwood, a member of the Board of Directors of the News and its Director of Sales, was asked repeatedly if he ever talked to anyone at Ancorp about the Mirror. Mr. Underwood testified that he recalled one conversation with Mr. Garfinkle in which he asked Mr. Garfinkle why the Mirror was no longer on Mr. Garfinkle's newsstands. Mr. Underwood testified

that he asked this question only in passing in a telephone call that he had made for an entirely different purpose.

(c) The depositions of Mr. Maher and Mr. Rodgers, members of this firm, reveal no conversations concerning the Mirror with any of the Ancorp defendants.

(d) In their depositions, Mr. McCollough, President of Ancorp and Mr. Levine, an employee of Ancorp, both denied having had conversations concerning the Mirror with anyone associated with the News.

(e) The testimony of Archie Gordon given at his deposition provides no evidence that defendants ever communicated with each other concerning the Mirror. Indeed, Mr. Gordon's testimony contained no probative evidence at all. Plaintiff's counsel complained about the supposed inaccessibility of Mr. Gordon for two years. When he finally took Mr. Gordon's testimony he asked only ten minutes of questions - none of them directed to the one area in which Mr. Gordon had some knowledge - the reason why the Mirror was removed from the Ancorp newsstands. Mr. Gordon's affidavit in that regard is being submitted herewith, and will be discussed below (¶27).

(f) In his deposition, Harry Kane, Assistant Circulation Sales Manager of the News, was asked a series of questions concerning giving free copies of the News to news dealers to promote sales. He emphatically denied any such practice. At this deposition the News produced two internal documents that relate to the monitoring of circulation of other newspapers. The first document is a form entitled "Circulation Representa-

tive's Report" which was periodically completed and delivered to the Circulation Department of the News by field representatives. In his deposition at pp. 8-15, Mr. Kane explained the use of this document as a general business practice. The second document is a memorandum by Mr. Kane dated January 12, 1971, which was explained by Mr. Kane at pp. 22-27 of his deposition. Copies of the "Circulation Representative's Report" form and Mr. Kane's memorandum are attached to the Appendix as Exhibits M and N, respectively. Both documents represent nothing more than the normal business practice of keeping track of competitors' sales.

The Present Posture of this Action

24. At the conclusion of considerable discovery on plaintiff's part and after more than ample opportunity for the full development of its case, plaintiff has not developed and cannot show any evidence to support the allegations of the complaint. If the Court agrees with us that such is the case, there can be no justification for allowing a trial to proceed on nothing more than amorphous charges supported by suspicion and conjuncture.

25. The complaint (Appendix Exhibit A) contains only four allegations which could possibly be characterized as specific. They are found in paragraph 11: (a) that the Ancorp defendants refused to carry plaintiff's paper (b) that the defendants exerted pressure on others to refrain from

carrying plaintiff's paper and to refrain from advertising therein (c) that the Ancorp defendants aided the News by distributing "additional" copies of the News to divert circulation from plaintiff's newspaper, and (d) that the defendants diverted advertising from plaintiff's newspaper. Analysis of the proof available to plaintiff on these four points will show that there is nothing for the Court to try.

26. With respect to the admitted refusal of the Ancorp defendants to carry plaintiff's papers on Ancorp's newsstands, there is no showing of any conspiracy or conspiratorial purpose, and there is a very cogent alternative explanation. That explanation appears in the deposition of Mr. McCollough and in the affidavit of Daniel Rauch submitted herewith. The explanation is confirmed by the affidavit of Archie Gordon.

27. Briefly told, Mr. Gordon was the general manager of a company (Gregg News Co.) which was in the business of making delivery of newspapers to newsstands and distribution points. Gregg was, in other words, a wholesaler. Plaintiff hired Gregg to wholesale its newspapers to certain retail outlets in the five boroughs of New York City. Mr. Gordon called Ancorp, which agreed to carry the Mirror on its newsstands at an agreed price. About a week later Mr. Gordon was terminated by plaintiff and representatives of Ancorp received a telephone call from a different wholesaler purporting

to handle the Mirror, which advised that it would only deliver the Mirror to Ancorp at a price higher than was being paid to Gregg News. Ancorp refused to pay the higher price and did not thereafter carry the Mirror.

28. It is fair to assume that the event which triggered this lawsuit, only two months after plaintiff began publication, was the refusal of the Ancorp defendants to carry the Mirror on their newsstands. Plaintiff saw this refusal as part of a conspiracy, ignoring the obvious business reason therefor.

29. But no matter how one may characterize the refusal, there is no proof of conspiracy and nothing to connect the News therewith. Certainly the fact that various officers, directors and employees of the Ancorp defendants knew each other and knew some officers, directors and employees of the News, that they met socially on occasion and discussed their own business dealings from time to time over the years is not enough to support any inference of conspiracy. Nor is the fact that the News circulation department monitored, as it did with all other newspapers in New York, the distribution of the Mirror during the period it was being published. As is pointed out in the depositions of Mr. Underwood (see pp. 21 and 79 of the Underwood transcript) and Mr. Kane (see pp. 13-14 and 48-49 of the Kane deposition transcript), the News followed a policy of compiling its own reports on the

sales of other newspapers. Plaintiff had failed to uncover a single document which in any way relates to any meetings, conversations, in person or on the telephone, or other communications between the News, on the one side, and the Ancorp defendants on the other, in any way pertaining to the distribution of the Mirror specifically or for that matter, to the Mirror in any context at all. Similarly, plaintiff has developed no testimonial proof of any collusion, conspiracy or other joint action concerning the Mirror, or any effort to keep it off the newsstands operated by the Ancorp defendants. Hence, on the eve of trial, the record is utterly devoid of any proof to support the central allegation of the complaint in this action.

30. With respect to the allegation that defendants exerted pressures on other distributors, there was not a single question asked in any of the depositions with respect to this subject matter, and we are aware of no proof which plaintiff has on this point.

31. As to the claim that extra copies of the News were distributed by the Ancorp defendants to divert circulation from the Mirror, the News denies furnishing additional copies (see paragraph 23(f) above), and, if plaintiff has developed any contrary proof, we are unaware of it.

32. Finally, with respect to the allegation that the defendants diverted advertising from the Mirror, the only

question asked in all of the depositions with respect to this allegation was asked of Mr. Underwood. That question and Mr. Underwood's answer were as follows:

> "Q. Mr. Underwood, in your dealings generally and in connection with your duties, did you find the Daily Mirror during the period of the 70's showing a substantial increase in sales or in advertising sales during that period?
>
> A. I wasn't interested in the advertising contents of the paper at that time.
>
> I was interested in sales. All of the reports that came to me indicated they were not showing increases in sales. They were showing losses in sales over their initial --
>
> Q. You are talking of circulation sales?
>
> A. Circulation, yes."

In view of the absence of any effort on the part of plaintiff to develop information from the defendants with respect to these allegations, there seems no purpose in discussing the claim further.

33. Insofar as the News is concerned, it now appears that it has become an object of a meritless lawsuit solely because plaintiff required a co-conspirator for the purpose of stating a claim under Federal and State anti-trust laws based on the refusal of the Ancorp defendants to handle the Mirror. That is the only explanation which appears to account for the naming of the News as a defendant without even a scintilla of proof of any involvement in the event which evidently angered plaintiff and which constitutes the only grievance, albeit not an actionable one, which plaintiff has against anyone.

34. In summary, plaintiff has prosecuted an action based upon the theory that defendants have violated the anti-trust laws. On the record before this Court there is no evidence to support the claim as against the News, or, for that matter, the other defendants. If plaintiff has such evidence it should come forward with it now. If it fails, the motion for summary judgment in favor of the News should be granted.

Mark D. Geraghty

Sworn to before me this
5th day of May, 1975.

Notary Public

JOHN D. CANONI
Notary Public, State of New York
No. 60-5595940
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff,

-against-

NEW YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

71 Civ 1211 (MEF)

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

DANIEL RAUCH, being duly sworn, deposes and says:

During the years 1970 and 1971, I was the Chief Clerk of the Newspaper and Magazine Department of the Union News Company and was responsible for the newspapers and magazines that were displayed on the Union News Co. stands owned and operated by Ancorp National Services, Inc. I reported to William McCollough.

I am familiar with the sale at The Union News stands of the Daily Mirror since I made arrangements for the distribution to the Union News stands. Toward the end of the year 1970, I had a conversation with Archie Gordon who was distributing newspapers under the name of Gregg News Co. about distributing the Daily Mirror to the stands. Following my discussion with him, it was agreed that certain Union News stands would receive for sale at retail, the Daily Mirror for which Union News Co. would pay the Gregg News Co. 10-1/2 cents for each copy sold.

The Daily Mirror sold, at the Union News stands starting on or about January 4, 1971. About a week later, I received a call from Irving Hofferman of Metropolitan News Co., another distributor of newspapers. He advised me that

they were going to take over the distribution to the news stands of the Daily Mirror and that Gregg News Co. would not be delivering any further. He asked me if the price we were paying was 12 cents. I said no. He asked me if we were paying 11 cents and I said no. Mr. Hoiferman then told me he would not distribute for 11 cents and I responded that neither would we pay 11 cents.

In a subsequent conversation with Mr. Gordon he revealed to me that he was no longer distributing the Daily Mirror. Since Metropolitan News would not accept 10-1/2 cents per copy for each paper sold, we no longer sold the Daily Mirror from any of our Union News stands.

Daniel Rauch

Sworn to before me this
5th day of May, 1975.

Notary Public
CARL P. BOWEN
NOTARY PUBLIC, State of New York
No. 4507775 Qualified in Westchester Co.
Certificate filed in New York County
Commission Expires March 30, 1977

AFFIDAVIT OF JAMES J. LYNCH dsa 110

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

DAILY MIRROR, INC.

Plaintiff,

against

NEW YORK NEWS INC., HARRY GARFINKEL, AMERICAN NEWS COMPANY, INC., UNION NEWS COMPANY, INC., and ANCORP, INC.

Defendants

AFFIDAVIT

- X

STATE OF ILLINOIS (- - - - - - - - - - - - - - - -ss.:

COUNTY OF COOK)

JAMES J. LYNCH, being duly sworn, deposed and says:

1. I have been asked to make this affidavit by the attorneys for the New York News, Inc. ("the News") one of the defendants in the above entitled action in connection with their motion for summary judgment dismissing the complaint.

2. They have advised me that this action seeks damages from the News and other defendants, for alleged violations of the anti-trust laws arising out of an alleged conspiracy to drive plaintiff's newspaper "The Mirror" out of business through various means including an agreement with the other defendants named in the action to keep the Mirror off news stands which the other defendants operated.

3. I understand that in answers to interrogatories, propounded by the News, plaintiff's attorney has claimed that I participated in meetings and engaged in communications relating to the conspiracy alleged in its complaint, which according to paragraph 8, thereof, commencing on or about January 1971.

4. I held the position of Treasurer of the News through the end of the year 1970. As of the first of the year 1971, I left the News and went to Chicago to become Director - Corporate Finance of Tribune Company, which owns the stock of the News. I subsequently became Treasurer and Vice President of Tribune Company and have remained in Chicago. Hence, at the time of the alleged conspiracy, I was not employed by the News and not in New York.

5. At no time did I have any role in any conspiracy, participate in any meetings or have any conversations with any officers, directors, employees, or agents of any of the co-defendants concerning (a) distribution or sale of the Mirror in the New York area or elsewhere, (b) any conspiracy or plan of any kind to drive the Mirror out of business or to keep it off any news stand.

James J. Lynch
James J. Lynch

Sworn to before me
this 2nd day of May 1975.

Margaret M. Frenchick
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC., Plaintiff,	71 Civ. 1211(MEF)
-against-	AFFIDAVIT OF ARCHIE GORDON
NEW YORK NEWS, INC., HARRY GARFINKLE, AMERICAN NEWS COMPANY, INC., UNION NEWS COMPANY, INC. and ANCORP, INC., Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ARCHIE GORDON, being duly sworn, deposes and says:

1. I am the general manager of Gregg News Company ("Gregg") and have held that position since the company's inception about 8 years ago. I have been associated with Gregg and its predecessor companies for approximately 25 years. My duties relate solely to the company's business affairs and other Gregg employees deliver the products that the company distributes.

2. I have been asked by the attorneys for New York News Inc. ("News") to make this affidavit in connection with a motion for summary judgment in the above-entitled action.

3. I am also employed as one of approximately 1,100 truck drivers who deliver The News using trucks supplied by The News. I have been employed in this capacity by The News (except for a period of approximately 10 years from 1951 to 1961) for about 40 years. I work 5 days a week as a News driver and I am, and have always been, paid for that employment in accordance with the applicable labor agreements between The News and the union

that represents the News' delivery department employees (Newspaper and Mail Deliverers' Union of New York and Vicinity), of which I am a member.

4. I have never had any communications of any type, written or oral, with any officer or supervisor of The News concerning the plaintiff Daily Mirror, Inc., the newspapers it has published or my company's role (described more fully below) in distributing one of those newspapers in early 1971.

5. Since Gregg began business about 8 years ago, it has distributed the Village Voice, several English magazines and art books. Gregg is also the sole distributor for Editor & Publisher in the New York City area. Many of these products have been distributed for several years to newsstands in the New York City area operated by defendant Union News Company ("Union News") and other companies. Gregg's business is completely independent of my employment with The News, and Gregg has no connection with the News whatsoever.

6. Gregg was engaged in its wholesale business as described above when I was approached by Robert W. Farrell in or about May 1970. I had never met Mr. Farrell prior to that time. Mr. Farrell told me that his company was about to publish a new newspaper around the first of the following year. Mr. Farrell asked me if Gregg would be able to distribute that newspaper to certain Union News outlets such as Grand Central, Penn Station, Port Authority Bus Terminal and airport and subway newsstands. I said that Gregg was interested in this business and we agreed that Gregg would distribute the new newspaper and would pay the plaintiff 7 cents for each copy sold (with credit for returns). This agreement was later reduced to writing.

7. Almost immediately after this conversation with Mr. Farrell, I called Mr. Daniel Rauch of Union News. I told Mr. Rauch that Gregg was going to handle the Daily Mirror and that we wanted Union News to sell it on its newsstands. Mr. Rauch told me that this would be done if we could agree on an acceptable price. We then discussed various prices, and Mr. Rauch said he would get back to me. Very soon thereafter, Mr. Rauch called me and we agreed that Union News would carry the Daily Mirror on its newsstands and pay Gregg 10.5 cents per newspaper sold. I then told Mr. Farrell that Gregg had worked out an agreement with Union News and he said he was pleased.

8. Between that time and the appearance of the first issue of the Daily Mirror in early January 1971, my only contacts with Mr. Farrell related to reports from him as to the expected publication date. When the Daily Mirror did appear, Gregg distributed it for a total of 6 consecutive days. However, the newspaper did not sell well during the short period that Gregg distributed it and I would estimate that from 70 to 90 percent of the copies Gregg distributed were returned to it as unsold.

9. Near the end of Gregg's 6-day distribution, I received a call from Mr. Philip Budin of the Daily Mirror. Mr. Budin told me that his company had decided it was going to a different type of delivery and that, therefore, Gregg's services were no longer required. He did not identify the new distributor. I thanked Mr. Budin for calling, and that was the end of that conversation.

10. After Mr. Budin's call to me, I called Mr. Rauch at Union News and told him that Gregg was no longer the Daily Mirror's distributor. Mr. Rauch told me that he had already been contacted by another distributor (he said Metropolitan News Company) but that Union News had decided that it was not going to

handle the Mirror any longer because the new distributor's price was too high for the effort and trouble that was involved on its part. Mr. Rauch did not tell me what that price was. I had no further discussions with the Daily Mirror or Union News.

Archie Gordon
ARCHIE GORDON

Sworn to before me this
2nd day of May, 1975.

John D Canoni
Notary Public

JOHN D. CANONI
Notary Public, State of New York
No. 60-5505940
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC., Plaintiff, -against- NEW YORK NEWS, INC., HARRY GARFINKLE, AMERICAN NEWS COMPANY, INC., UNION NEWS COMPANY, INC., and ANCORP, INC., Defendants.	Index No. 71 Civ. 1211 (MEF)

AFFIDAVIT OF
JEFFREY A. SHUMAN

AFFIDAVIT OF JEFFREY A. SHUMAN

STATE OF NEW YORK)
: ss.: A F F I D A V I T
COUNTY OF NEW YORK)

JEFFREY A. SHUMAN, being duly sworn, hereby deposes and says:

I am the Corporation Counsel and Corporate Secretary for ANCORP NATIONAL SERVICES, INC., 477 Madison Avenue, New York, New York, 10022, a Delaware Corporation, duly authorized to do business in New York.

I am making this affidavit in order to explain to the Court the applicable history of ANCORP NATIONAL SERVICES, INC. since it began as the AMERICAN NEWS COMPANY on October 26, 1934, and to explain its connection with the UNION NEWS COMPANY.

The UNION NEWS COMPANY, which had in the past been a subsidiary of the AMERICAN NEWS COMPANY, was merged into the parent on December 6, 1967, and that subsidiary is now a division which operates for inter-office purposes under the title of "Retail Division". There are remaining a few news-stands upon which the name UNION NEWS COMPANY still appears. These are being phased out, and the name UNION NEWS COMPANY is not used for any other purposes.

On April 30, 1969, the name AMERICAN NEWS COMPANY was changed to ANCORP NATIONAL SERVICES, INC. by filing an amendment to the Certificate of Incorporation, with the

Secretary of State, and this is the name under which the company operates today.

DATED: May 1, 1975

JEFFREY A. SHUMAN

Sworn to before me, this 1st day of May, 1975.

Notary Public

[illegible] Notary Public, State of New York
[illegible] County
Commission Expires March 30, 1976

dsa 119

NEWS' AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S
MAY 19, 1975 MOTION FOR FURTHER DISCOVERY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

DAILY MIRROR, INC.,

Plaintiff,

- against -

NEW YORK NEWS INC., HARRY GARFINKLE, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

- -X

"For Referral to Judge Frankel After Docketing"

71 Civ. 1211 (MEF)

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION FOR FURTHER DISCOVERY AND OTHER RELIEF DATED MAY ~~19, 1975~~

Served	5/26/75
Filed	5/27/75
	5/27/75

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MARK D. GERAGHTY, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the United States District Court for the Southern District of New York and am a member of the firm of Townley, Updike, Carter & Rodgers, attorneys for defendant New York News Inc. ("New York News") in the above-entitled action. I make this affidavit in opposition to plaintiff's motion, dated May 19, 1975, for additional discovery and for "reconsideration of the timings and adjustments now necessary in the scheduling of this case for trial."

2. Instead of serving and filing answering papers to defendants' motion for summary judgment made by defendants and now pending before this Court plaintiff has made a motion seeking

an order granting it leave to conduct further examinations before trial and further discovery of documents and an adjustment of the trial schedule fixed by this Court. The plaintiff's motion also seeks leave for reargument of a motion previously made seeking the disqualification of the attorneys for defendants Union News Company, Inc., American News Company, Inc., and Ancorp, Inc. ("Ancorp National Services Inc.").

The Request for Additional Discovery

3. Instead of demonstrating the existence of a sound basis for the conduct of further discovery proceedings by plaintiff, plaintiff's counsel has in effect, asked for additional discovery on the sole grounds that the defendants in this action have impeded plaintiff's discovery by acting in concert and with bad faith through the agency of their attorneys. In order to make this argument he has not hesitated to sign and submit an affidavit which, in addition to being argumentative rather than factual, is highly misleading.

4. The net effect of this course of action is to demonstrate the frivolous nature of this most recent motion seeking further discovery. More than that, however, it compels us to clarify certain sworn statements made by Mr. Farrell in his affidavit.

5. With respect to the direction of this Court contained in its letter to counsel dated May 1, 1975 that the New York News produce for inspection by plaintiff the "bill of sale"

relating to the acquisition by the New York News of the assets of the New York Mirror in 1963 (a newspaper which was completely unrelated to plaintiff and its publication) Mr. Farrell, in his affidavit, states in the first paragraph on page 5:

> "That delivery [the delivery of the bill of sale] has not been made as ordered."

In the first paragraph on page 6 he goes on to state that:

> "These attorneys [obviously referring to Messrs. Townley, Updike, Carter & Rodgers] have now withheld the names of the signators on that contract [the bill of sale] among other things thus to suppress the necessary information and to stifle any examination before trial of the signators.***"

6. Mr. Farrell's facts are inaccurate and must be corrected.

7. I was in Europe when this Court's letter of May 1, 1975 directing production of the "bill of sale" was received in this office. However, I am advised by my partner, John D. Canoni, Esq., that within one hour of the receipt of the Court's letter there was dispatched by mail to Mr. Farrell a photostatic copy of the agreement between the Hearst Corporation and the New York News Inc. for the acquisition of the assets of the New York Mirror. The copy of the acquisition agreement sent to plaintiff's attorney was made from a conformed xeroxed copy of the original acquisition agreement which had been manually signed by officers of the respective parties.

8. Mr. Farrell rejected the xeroxed copy of the acquisition agreement which was sent to him and returned it to me

with a letter dated May 3, 1975, which is annexed to and made a part of this affidavit as Exhibit A. As the Court will note, Mr. Farrell did not disclose the reasons for his objection, which he held unto himself until the filing of this motion.

9. However, approximately one week after the filing of our motion papers I had a discussion with William Klein, Esq., an attorney associated with Mr. Farrell, who has from time to time participated in the prosecution of this action on behalf of the plaintiff. During the course of our conversation Mr. Klein advised me that the xeroxed copy of the acquisition agreement which was sent to Mr. Farrell did not contain the signatures of the individuals executing the agreement.

10. As a result of my conversation with Mr. Klein I examined the xeroxed copy of the acquisition agreement which was returned by Mr. Farrell and discovered that, indeed, the signature page of the acquisition agreement was not completely legible. As a result, I arranged for a more legible xeroxed copy of the last page of the acquisition agreement and also arranged for the making of a xeroxed copy of the last page of the manually executed acquisition agreement. Both of those xeroxed last pages were sent to Mr. Farrell under our letter dated May 16, 1975, a copy of which is annexed to and made a part of this affidavit as Exhibit B. I presume my letter of May 16, 1975 was in Mr. Farrell's hands at the time he made his affidavit of May 19, 1975.

11. In the second paragraph on page 6 of his affidavit Mr. Farrell states:

NEWS' AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S
MAY 19, 1975 MOTION FOR FURTHER DISCOVERY

"At this time, we cannot refrain from pointing out, once again, in relationship to the entire history of delay, that, for almost one year or so, in which, we, the plaintiff, were compelled to merely wait, while the defendant's counsel pretended to insist on termination of this entire case using for such purposes the usual routine and standing omnibus stay (of Bankruptcy Judge Ryan), in the Ancorp.Inc., matter.

All of the defendants counsel joined in that insistence pretense, none, of whom finally offered any opposition to the granting of the removal of that stay, as demanded by the plaintiff."

12. Mr. Farrell has persistently charged that this firm invoked a general stay order in bankruptcy proceedings involving Ancorp National Services Inc. for the purpose of staying this action. Now Mr. Farrell enlarges on that statement by contending that this firm "pretended to insist upon termination of this entire case" by invoking the general stay order. We have repeatedly advised the Court that we never took a position with respect to the bankruptcy stay when the general stay order was invoked by the attorneys for Ancorp National Services Inc. in connection with plaintiff's discovery motion made in 1974. In fact, we have pointed Mr. Farrell to my affidavit filed in connection with his original motion for additional discovery in which we expressly stated that we were taking no position with respect to Ancorp National Services Inc. stay order. A copy of my affidavit sworn to April 16, 1974 is annexed to and made a part of this affidavit as Exhibit C. The Court is respectfully directed to the contents of paragraph 1 of said affidavit. Indeed, subsequent to that affidavit, and prior to Judge Carter's order staying the action, the New York

News filed answers and objections to plaintiff's interrogatories.

13. I can state unequivocally that this firm never insisted on either a stay of this action or a "termination of the entire case" based on any stay order issued by any court in any jurisdiction.

14. In the next paragraph of his affidavit, Mr. Farrell states: "That extended situation [the motion for a stay of this action] held up Judge Carter and plaintiff in prosecution for almost one year."

15. Reference is made to the contents of my letter to this Court dated April 29, 1975 where I set forth a chronology of events in this litigation which makes it clear that this statement is untrue. A copy of the relevant extract of my April 29, 1975 letter to this Court is annexed to and made a part of this affidavit as Exhibit D.

16. This affidavit will not attempt to deal point by point with Mr. Farrell's affidavit. Suffice it to say Mr. Farrell blames the defendants, their lawyers and the court - everyone but himself - for the position he now finds himself in - unable, as he is, either to answer our summary judgment papers or to go to trial. Yet, the fact is that, prior to being faced with the imminency of trial or summary disposition of his claims, in all the time he has acted as counsel of record for plaintiff in this action he never sought the Court's assistance in correcting the abuses he now claims were heaped upon him. If he was dissatisfied

with his discovery in 1973 and 1974 he had an absolute right to seek relief under the Federal Rules of Civil Procedure but he failed to do so. There is simply no basis in fact to support the sweeping claims that defendants have frustrated plaintiff's discovery. Quite to the contrary th[illegible]irm had always promptly dealt with all discovery demands made by plaintiff. Thus, he should not be allowed further discovery for the reason that his right to discovery has been impeded.

17. Beyond this, plaintiff has altogether failed to demonstrate that additional discovery in this action will result in the development of any information which would constitute relevant admissible evidence which could be used in support of the material allegations of its complaint. To grant plaintiff's request for relief would only result in another round of depositions which would produce more of the irrelevancy which overflows the transcripts of testimony which have already been produced by the reporting company in this action.

18. Take, for instance, Mr. Farrell's claim that in the case of Archie Gordon "it became necessary as the examination developed to obtain further testimony in necessary completion of their partial disclosure or their claims of inability to furnish their required information." (See the fifth and sixth paragraphs on page 4 of the Farrell affidavit.)

19. With respect to Archie Gordon Mr. Farrell engaged in a two-year dispute with this firm repeatedly asking that the New York News produce Mr. Gordon in a deposition in which Mr.

Gordon's testimony would be binding on the News as an agent of the New York News. We consistently advised Mr. Farrell that since Mr. Gordon was an employee the News would not produce him as agent but that Mr. Farrell could always subpoena Mr. Gordon as a witness. Finally, this Court asked this firm to assist in making Mr. Gordon available as a witness in connection with the motion for summary judgment. We did so. Mr. Farrell then had an opportunity to depose Mr. Gordon. A copy of the transcript of Mr. Gordon's testimony is annexed to and made a part of this affidavit as Exhibit E. That transcript speaks for itself and speaks eloquently for the manner in which plaintiff has conducted this lawsuit.

20. Plaintiff has had the opportunity on this motion to point to specific areas in which it contends it requires additional discovery. It has failed to do so. Plaintiff could have filed with this Court transcripts of the testimony of those who were deposed in this action and then have directed the Court's attention to those portions of the transcripts which would support a claim that the testimony of witnesses was incomplet Plaintiff however, as of the date of this affidavit, has not even filed the transcripts of deposition testimony taken in this case. Instead, as earlier discussed, plaintiff has taken a blunderbuss approach seeking, in effect, an unfettered right to continue inquiries to an unlimited extent. The consequences attendant on plaintiff being permitted to do this are very obvious, especially in light of what has already transpired

in discovery proceedings in this case. The defendants will be put to substantial expense and will be the subject of potentially great harrassment without any likelihood at all that such depositions will produce admissible evidence of any kind whatever.

21. In summary we oppose plaintiff's motion for further discovery because plaintiff has failed to demonstrate that any additional discovery in this action will lead to the development of admissible evidence which could either be introduced at trial or be used to demonstrate on defendants' motion for summary judgment the existence of a triable issue of fact to defeat that motion.

The Disqualification of Mr. Cohn

22. We take no position with respect to that branch of plaintiff's motion which seeks the disqualification of Roy Cohn, Esq.

Adjustment of this Court's Timetable

23. Finally to the extent that plaintiff seeks an adjustment of the Court's timetable set forth in its letter to counsel dated April 24, 1975, we note that the motion for summary judgment which is now pending before this Court was filed in accordance with that schedule. We urge that there should be no alteration to the schedule for briefing in connection with the motion for summary judgment and we assume the motion will be submitted for determination on the return date, May 27, 1975.

With respect to the trial date fixed by the Court we are, of course, at the Court's disposal.

Mark D. Geraghty

Sworn to before me this
23rd day of May, 1975

Adelaide R. O'Neill
Notary Public

ADELAIDE R. O'NEILL
NOTARY PUBLIC, State of New York
No. 03-8221185
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

dsa 133

JUDGMENT DATED JUNE 11, 1975
DISMISSING THE ACTION

U.S. DISTRICT COURT
FILED
JUN 11 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.

Plaintiff : 71 Civil 1211 (MEF)

-against- : JUDGMENT

NEW YORK NEWS INC., HARRY GARFINKLE, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC. :

Defendants

Defendants having moved for summary judgment pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Marvin E. Frankel, United States District Judge, and the Court thereafter on June 9, 1975, having handed down its memorandum opinion granting the said motion, and directing the Clerk to enter judgment, it is,

ORDERED, ADJUDGED and DECREED: That defendants NEW YORK NEWS INC., HARRY GARFINKLE, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC., have judgment against plaintiff DAILY MIRROR, INC., dismissing the action, with prejudice, and with costs to be taxed, to the defendants.

Dated: New York, N.Y.
June 11, 1975

Raymond F. Burghardt
Clerk

MICROFILM
JUN 11 1975

Rec'd	
Served	
[illegible]	
[illegible]	
E/D Mtc	
appeal	7/11/75
[illegible]	[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

"For Referral to Judge Marvin E. Frankel"

DAILY MIRROR, INC.,

Plaintiff,

- against -

NEW YORK NEWS INC., et al.,

Defendants.

71 Civ. 1211

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION DATED JUNE 17, 1975

[illegible]	
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[illegible]	7/3/75
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	MCS

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MARK D. GERAGHTY, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before the courts of the State of New York and this Court and I am a member of the firm of Townley, Updike, Carter & Rodgers, attorneys for defendant New York News Inc. in the within action. I make this affidavit in opposition to plaintiff's motion brought on by notice of motion dated June 17, 1975.

2. On June 18, 1975 we received the above-described notice of motion together with a supporting affidavit and a further application to this Court requesting it to recuse itself. The Court disposed of the application to recuse itself by order dated June 24, 1975.

3. We have now received further affidavits filed by plaintiff in support of its motion dated June 17, 1975 seeking,

on unspecified grounds, an order vacating (a) the order of this Court dated June 9, 1975 granting summary judgment to defendants and (b) the judgment subsequently entered thereon.

4. The affidavits filed by Mr. Farrell and Philip S. Budin in support of the motion are filled with conjecture, misstatements of fact, heresay, vicious personal attacks and claims of "gangster" association which might well be actionable, if made outside this action. They are empty of any facts which either (a) support any effort on plaintiff's part to vacate this Court's order and the judgment entered thereon, whether viewed as a motion to vacate a default judgment, a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure or a motion to vacate the order and judgment because of prejudice on the part of the Court or (b) suffice as a response to defendants motion for summary judgment which could have defeated that motion.

5. From his submissions, it is obvious that Mr. Farrell does not understand the law governing motions for summary judgment, is not familiar with and does not have a working knowledge of the Federal Rules of Civil Procedure and is either unwilling or incapable of engaging in litigation in conformity to the high standards that exist in this District.

6. This latest submission is, in itself, strong evidence that plaintiff never had a valid claim and that its chief executive officer and attorney of record has never had any support for plaintiff's prepostorous claims of conspiracy other than the product of his own imagination.

7. Plaintiff's latest motion, on whatever grounds it is based, should be denied in every respect.

Dated: New York, New York
July 2, 1975

Mark D. Geraghty

Sworn to before me this
2nd day of July, 1975

Adelaide R. O'Neill
Notary Public

ADELAIDE R. O'NEILL
NOTARY PUBLIC, State of New York
No. 03-8221185
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

A Between '64 and '69.

Q From '69 to '72?

A More frequent.

Q That applies also to Myron, the son?

A Yes.

Q Are you saying now that in connection with those more frequent contacts between '69 and '72 at no time was the Daily Mirror discussed?

A At no time.

MR. KLEIN: Note the witness now recalls after conversation with Mr. Canoni, his counsel.

A At one time that I can't recall when it was, one of my sales representatives told me that The Mirror was not being distributed on some of the Union News stands. Shortly thereafter, Henry Garfinkle called and during the course of the conversation which was an invitation to a dinner he said he could not find any room for The Mirror on their stands.

Q Just tell us what he said to you as far as you recall and you said to him on that subject of The Mirror.

A As I recall, he said, "I cannot find any room on the newsstand for The Mirror."

Q Wasn't there anything that preceded that

statement?

Because I want the pro and con, the exchange of conversation from you to him and him to you as you recall it.

A As I recall, I said, "How is The Mirror doing?" He said, "I can't find any room on the newsstand for them."

Q So the only way The Mirror came up, you inquired, "How is The Mirror doing"?

A Because the reports came to me from one of my sales representatives, "How about The ~~News~~ MIRROR on the stands?"

Q Called to inquire about that?

A He called; and during the conversation to verify whether or not the representative was right.

Q Did you express any pleasure with respect to his report?

A No.

Q Or displeasure?

A No.

Q Did you say to him, "Now you can make room because competition is good for all papers"?

A No, I didn't make any comment.

Q As a matter of fact, you believe that?

A Yes, I do.

Q You did in fact at sometime prior to that conversation learn that The Mirror was for public sale on the stands of Garfinkle, you had learned that?

A No, I hadn't.

Q So as far as you knew, there was never any displays of The Mirror on the American News stands or the Garfinkle stands?

A As a matter of fact, I thought The Mirror was on display everywhere and they were selling everywhere and I didn't know they weren't being displayed on certain stands until the sales representative told me about it.

Q And until Mr. Garfinkle told you there was no room for it on his stands?

A I referred to that.

Q You remember when the public announcement came out that The Mirror would sell on the stands of the city?

A It seems to me there were certain announcements. I am not sure when the last one was made.

Q Did you at that time have any calls with Mr. Garfinkle with respect to the appearance on his stands of The Mirror?

A No.

Q In other words, would you say you avoided

asking him about that because you weren't concerned?

A I must say I was not concerned about The Mirror.

Q When you say that you, you speak for The News?

A I speak for The News.

Q And that no other associate of yours was concerned?

A I don't know about my associates.

Q When you say that The News wasn't concerned, don't you imply that all associates of yours who might have anything to do with the competing newspaper were similarly unconcerned?

A I would say we were unconcerned.

Q Speaking for everybody at The News?

A Yes.

Q Weren't you told by Mr. Garfinkle at any time when The Mirror first, if at all, came to his stands for display?

A No.

Q You had reports, however, from your assistants and they gave you that information?

A Yes.

Q Did The Mirror become a subject of conversation in The News office amongst your associates or

Q Other than Boston where Garfinkle in Boston Distributing Company, is there any other company Garfinkle owns that you distribute to?

A None that I know of.

Q You think there is such a situation?

A I don't believe so.

Q How many newsstands would you estimate?

You have given us an estimate on the Gaynor and given us an estimate on Union.

How many newsstands would you consider a point of distribution other than Union News, do you have in your metropolitan and suburban area outlets?

A I would say it would run between ten and 13,000.

Q And what is your price structure to this ten or 13,000 outlets?

A May I answer that question by saying I will supply that to you in written form.

MR. CANONI: At what point in time?

Q 1964 to '71.

MR. CANONI: We will consider that.

Can we go off the record.

(Discussion off the record.)

MR. CANONI: We have determined that the price of the daily paper was increased from seven

MR. CANONI: We have produced for you the name of the only stockholder in the News, the name of the entity that owns stock in that corporation, and we give you today the beneficiaries of that trust.

MR. KLEIN: You don't identify them. You simply name them.

In order to avoid extended examination of all the names, I might have been able to get a statement from him that some are or are not, and that he knows that they are not, and let that be the end of the question.

MR. CANONI: All right.

Q Will you give us the names of the executives of Ancorp, American News, Union News, including Mr. Garfinkle, that you have definitely dealt with in connection with the circulation of the News? Can you do that?

A There is only one individual that I have dealt with in connection with direct circulation problems at the News, and that was William McCollough.

Q When you say direct matters of circulation, whom did you deal with, with respect to circulation indirectly among the executives of the three defendants

I mentioned, American News, Union News, and Ancorp?

A. I intercepted a call late one night from a newsstand operator at the Port Authority building, complaining about delivery of the News.

Q About what of the News?

A Delivery. But I am sure he is not an officer of Ancorp.

The only two officers that I can recall would be Henry Garfinkle, Bill McCollough, and they had an attorney, I forget his name, who died. I had a conversation with him.

Q With respect to problems of circulation at the News?

A No. With respect to an FTC case.

Q You refer to the case that took place in the year of '67, '68 and so on?

A Yes.

Q At that time you were manager of circulation?

A Correct.

Q You became entirely familiar, did you, in the course of that case, with the details of it?

A I gave a deposition.

Q That deposition is now a matter of record in court in that case, presumably?

specifically did when this Daily Mirror came into being with respect to the Daily Mirror and your newsstands?

MR. ROTH: What did you do, if anything?

A I didn't do anything. The first thing I knew they had it on the stand. That was McCollough and the men's decision downstairs to make.

Q They never discussed it with you?

A When it came out they never discussed it with me.

Q Before, they never consulted?

A With me?

Q When it went out of business.

MR. ROTH: You mean it went off the stands.

Q When The Mirror went off the stands it was never discussed with you?

A It was never discussed with me outside what I heard myself.

Q What did you hear?

A On television, The Mirror closed up.

Q Other than that with respect to the condition of your newsstands, and I think you testified you had about 850 newsstands at one time?

A Throughout the United States.

Q About 850?

A Yes. We had about 110 in New York City in the six,

five boroughs.

Q You had about 650, didn't you?

A Outside of New York City.

Q Within the eastern area?

A No. From here to San Francisco.

Q When that newspaper was being no longer circulated you heard nothing about it except most indirectly?

A Outside of the time when it closed up I knew about it.

Before that you understand they didn't handle it and what knowledge I had there was not enough papers sold to make out a pink ticket.

The bookkeeping cost us more than what we made on the paper.

Q Who told you that, by the way?

A Who told me that by the way?

MR. ROTH: About the pink ticket.

A About the free ticket was Mr. McCollough.

Q The pink ticket?

A The pink ticket was Mr. McCollough.

Q Did you ask about it or just accidentally?

A We spoke about it.

Q In passing?

A That is correct.

Q I now ask you, Mr. Garfinkle, you let us know, for example, dealing with the New York Mirror, did you have anything to do with the officials of that company at any time?

A The new one?

Q The old one.

A No.

Q With regard to say The New York Daily News organization, you have nothing to do with this, with them particularly?

A No.

MR. ROTH: The Daily News.

A No. I meet sometimes in restaurants, but I don't discuss business with them.

Q Not at all?

A No.

Q Now, with regard to The Times, for example, you have no occasion to have anything to do with the officials of The New York Times?

A No. I am talking about the big fellows, you know.

Q Were you acquainted with any of the facts regarding the termination of The New York Mirror when it

without making decision coming up to me.

Q And you make the decisions?

A I don't make no decisions, unless a book like Screw. Unless a thing like Screw.

Q In Screw you made the judgment.

A I made the judgment.

Q Do you know Sal Giglio?

A No.

Q Do you know a John Giglio?

A No.

Q Do you have a chauffeur?

A Who could afford one?

Q You don't have a chauffeur?

A No. We have a boy picks me up now, and my manager, with a car.

Q Did you have a chauffeur in '71, '70, '69?

A '70, and '71, I had a chauffeur.

Q What was that chauffeur's name?

A Bruce.

Q To the best of your knowledge, did you state you don't know the executives of the Daily News on a social basis? The President, the Vice-President, and so on.

A Never.

Q Would you know if they own any stock in your company?

A I don't know if he owns stock.

MR. KLEIN: The answer is no?

THE WITNESS: No.

Q When the subsidies were paid to Ancorp, the ones we spoke about in the government action from 1962 to 1969, the payments from the New York News and the New York Times, was that paid in cash? Were those payments made in cash?

A Absolutely not.

Q Were they made by check?

A Absolutely. Whatever it is done in that company is done right on the top of the table through checks and all that business.

Q Were those payments which were reported in the official records as being approximately $25,000 from each company --

A Absolutely.

Q -- the total amount of payments taken from the News or the Times?

Was that all the money that the New York Times and the Daily News paid Ancorp?

A The years I was there. 1955 until the company went into a Chapter 11.

Q It covered the entire period during which the Daily Mirror was up for sale?

A I don't know nothing about it.

I don't know anything about sales or changing of titles or names, what goes on with individual publications.

Q You knew nothing about the sale on the newsstands of Union News of the Daily Mirror between the years 1970 and 1972?

A No.

Q You knew nothing about that?

A No. Absolutely not.

Q With regard to the sale of the Daily Mirror on individual newsstands, you knew nothing about that either?

A Absolutely not.

Q Did you by any chance learn indirectly from any other source, like the Daily News executives, that there was such a publication as the Daily Mirror being sold?

A I don't discuss my business with anybody.

Q So that the answer to that question is no?

A No.

Q A newspaper or other publication would, when found to be unprofitable or uneconomical be rejected for sale on the Union News stands?

A The supervisor of the Union News Company, it would be up to them to decide what is not economical, what it cost our company to handle it, and whether we had room to sell.

Q Did you ever discuss that as a problem with the supervisor?

A No. That was a policy of the company way before I became president.

Q When you resumed or became president did you continue to adopt that policy?

A The same policy was adopted for 106 years.

Q When you became president did you discuss that with the supervisor at any time?

A Never did.

Q Who was the supervisor during the years 1969 to '72?

A Minnow. Kraus. Then there were probably 14 or 15 supervisors. I don't know their names.

You wouldn't expect me to know the names out of close to 6000 employees, would you?

Garfinkle

Q To the extent that you know, are these people still employed?

A I think they must be.

Q With the Union News?

A As far as I know.

Q When did you last have any contact with them on behalf of the Union News?

A Let me see, now. Last February of this year.

Q February of '73?

A Yes.

Q While your supervisors were determining whether a particular paper or publication was fit for sale on the Union News stands, did you discuss the question of the economics with anybody?

A Never did, when it came to that.

Q If, as the head of the Union News operation, you found the supervisor suddenly cutting off, let's say the Daily News, you would raise no question about it, yes or no?

A No.

Q If you found that Time or Life were determined by the supervisors of the Union News as undesireable for sale because it would be uneconomical to sell them you would raise no question?

A Never raised a question when Time and Life were off the stands at one time for economical reasons.

Q You would raise no question?

A No. You would have to have a sound reason for it.

Q Would you discuss the soundness of the reasons given by the supervisors?

A Sure. With them, if it came to that point. Then they would take it up with me.

Q You answered the question, Mr. Garfinkle.

Did you have a specific conversation within the years mentioned of '70, '71 and '72 with respect to the Daily Mirror, with your supervisors?

A No, sir.

Q Never at any time?

A Never at any time.

Q As president or as chief operating officer of Union News, do you remember what the conditions, the economics of the Daily Mirror were, during that period?

A Never did.

Q Never knew it?

A Never knew it.

Q You never had any occasion to talk about the Daily Mirror's economics with any of your super-

visors during those mentioned years?

A Never did for the simple reason there are other publications that come on the stand and off the stand if the sale was not there for economic reasons.

Q Try to confine yourself to the question I am putting to you.

MR. KREISBERG: He is. He has to answer the question that you give him.

MR. KLEIN: I move to strike out that portion of the answer after the word "never" and the two other words following.

Please repeat the question.

(Whereupon the pending question was read by the reporter.)

Q Answer, please.

A No.

Q If the Daily Mirror was on the Union News stands the first week of its publication in the year '70, would your supervisors, finding a new publication on the stards of Union News, watch the sale of that paper closely, yes or no?

A If any paper that came out the first week or second week was put automatically on the newsstand, if they watched it closely or not, I don't know nothing

Q Who?

A Mr. Nichols. Mr. Polio.

Q Who is Mr. Polio?

A Assistant to Mr. Nichols.

Q Did your wife and children have anything to say about that?

A No. Not as far as that is concerned.

Q They simply hold stock?

A Yes.

Q And otherwise have nothing to say. Is that right?

A That is correct.

Q I am going to ask you directly, Mr. Garfinkle, whether the Daily Mirror at any time, whether to your knowledge or to the knowledge of your supervisors, at any time became the subject of its being eliminated from the Union News stands because the Daily News objected?

A No, sir.

Q You learned, didn't you, that the Daily News had some kind of conflict or contest at sometime with the publishers of the second Mirror?

A No, sir. Never heard this.

Q Did there come a time when you learned or came

Garfinkle

to know of any purchase relationship between the Daily News and the Daily Mirror?

Do you know whether the Daily News ever bought out the New York Mirror, the first New York Mirror?

A Never knew about it.

Q Did you know that the Daily News had complained to the new second Daily Mirror that it was operating without permit?

A This I don't know. I never go into that.

Q I said, did you learn about it?

A Never. Never.

Q I didn't ask you whether you ever went into it.

If in your management of the Union News, if a conflict arose between the Mirror and the News with respect to the question of the invasion by the Mirror of Daily News rights, would that be a question for your decision?

A It wouldn't be a question of decision.

We don't interfere in any publishers' conflicts. They all get an equal share of what the company does.

We don't get into the middle of any of these conflicts between publishers. We have enough of our

own problems.

Q If the Daily News came to you and said that paper is an illegal publication and we don't want you to display it or sell it on your newsstands or we will cut you out on the sale of the Daily News, would it be for you to make a decision?

MR. KREISBERG: Objection.

A They would never come to me.

MR. KLEIN: This man is an expert. We are dealing with his normal functions in the operation of a business.

Q If you received notice on behalf of the Union News, if Ancorp or Union News or you, as head of Ancorp or Union News, received a communication to the effect that there was a lawsuit contemplated or to take place against another publication which you were selling or displaying for sale, would you make a decision on that point as to future display of that complaint?

A We don't interfere with any lawsuits brought among the publishers from one side to another.

Q I didn't ask you that.

I asked you whether you would make a decision with respect to the continued display of the newspaper complained of, yes or no?

A No. If there is a conflict between one and another we don't interfere. That is their fight, not our fight.

Q If the Daily News, a source of large income to the Union News Company, should tell you by mail or otherwise that the Mirror which you are displaying, alongside the News on Union stands, represents a violation of a contract with the Daily News, would that influence you in any way with respect to the continued sale of the mirror?

A Absolutely not.

Q You would be the one to make the decision?

A I don't make these kind of decisions without taking it up with our legal counsel.

If the legal counsel -- this is not my business when one publisher fights with another publisher.

Q What you meant when you said "absolutely not," was that you would take the matter up with counsel?

A That is right. Take it up or speak to counsel.

MR. KREISBERG: If there is an injunction and he can't sell it --

MR. KLEIN: We are not asking your opinion now.

Q You testified that distribution is usually

on certain routes, from that information, the man, the sales rep, makes the regulation.

Q Before you put the information into the computer from this man's reports, he comes in with a written report?

A Yes.

Q On this form?

A Every day.

Q Which is the News circulation representative report?

MR. GERAGHTY: It has an exhibit on it.

Q Is that the form we are speaking about? It's marked?

MR. GERAGHTY: As Defendants' Exhibit 1 for identification.

A That is a ~~diary~~ daily report submitted by sales represenatives.

Q Who were these 16 men, more or less?

A And also the ~~16~~ 9, suburban territory.

Q What do you do with these reports after they get into the computer?

A Those do not go into the computer.

Q Do you have other reports that go into the computer?

A Yes.

Q Where do they come from?

A From the drivers who pick up the returns from the dealers. The dealers have a return slip, and on that return slip, they break their returns down for each day, including Sunday.

Q The drivers do that?

A The dealers do that.

Q They give that form to the driver?

A With the returns.

Q Right.

A May I finish?

Q I am trying to confine you to this. You are going into other fields than my questions.

I am asking you simple questions. I want simple answers, if you can make them that way.

I have shown you a form, Defendant's Exhibit 1. For what purpose do you use that form?

A This is to determine by the sales managers and the assistants, and on occasions for my information, the activity that the sales representative performed for that individual day.

Q On that form there is a column which says "Withdraw and returns," and a code.

A Can you just point that out to me, please?

Q That says "Yesterday's draw, returns, call, code."

A All right.

When a sales rep visits a dealer for collection or for service or for any type of complaint --

Q Is that any one of those 16 men?

A Yes. Or the eight men in suburban.

Assuming they are going to check it. Assuming a dealer calls in, "I am not getting enough papers; I am selling out."

He is answering the complaint, did he get enough papers?

Q I asked you some simple questions.

I asked you to tell me, of the three columns that I have indicated, that those columns are filled in by who.

A Sales reps.

Q The ones out on the street?

A Correct.

Q On that form?

A Correct.

Q What did they do with that form?

A I told you that. They come back into the office,

to the assistants or the managers.

Q Who are under you?

A Correct.

Q What do they do with them?

A They look them over. As I stated before, this is to keep --

Q I asked you, what do they do with them.

A They are evaluated.

Q Who do they give that printed form to that some representative on the street fills out?

A It goes to the assistant, or to the manager. From there, an evaluation is made pertaining to any item on there. Then it's filed in a drawer.

Q Does it go to you?

A Only on occasions.

Q They are filed in a drawer?

A Yes.

Q How many would you say there are in the course of a week?

A There should be 16 a day. We have five days.

Q Would that be 80 to 100?

A Estimated.

Q In the course of a year you'd multiply that by 52?

A Estimated.

Q Those forms filled out by sales reps are put into a drawer?

A Filed.

Q Do you have copies of those for the years '69, '70 and '71?

A I would say not.

Q Would you have copies of those for '71?

A I would say no.

Q Do you destroy them?

A I would say, yes.

Q You would say that there were roughly 80 to 100 a week, and 52 weeks, so that at the end of any given year, '69, '70 or '71, there would have been anywhere from 400 to 500 such forms?

A Estimated.

Q Would those forms have come to the attention of Mr. Underwood, filled out by your men?

A I don't know.

Q In the normal course of business, if there was a problem that generated from one of those forms, would that matter be taken up with Mr. Underwood? He was your boss; wasn't he?

A No. My direct boss is Carleton Rosenburgh.

Q Would you take up those forms with Carleton Rosenburgh?

A If it was an important matter, yes.

Q Would those matters get to the attention of Mr. Underwood, if they were important matters?

A I don't know.

Q On those forms, do your representatives on the street, approximately 16 in the metropolitan area, fill in the names of other newspapers on their forms, like the Post, the Wall Street Journal, the Daily Mirror?

A What they normally do, we do get a Times checkup on sales, for the New York Times.

Q Only the Times?

A For the New York Times.

Q You would get the draws and returns for the New York Times?

A Not on these sheets. We would get their estimated sales.

Q Your men get that by asking the News dealers?

A Yes.

Q Do these men, who carry out communications from the News, you, Mr. Rosenburgh, or anybody,

convey messages to these News dealers, as to what they are told to say?

Do your representatives carry orders to the various News dealers that they meet with regard to the sale of your newspapers or any other matter relating to either the News or competitors?

A I don't understand what you mean by "orders."

Q To the best of your knowledge, do your 16 men in your employ ask questions from the various News dealers they go to?

A Pertaining to the sale of the News? Yes.

Q Pertaining to the sale of other newspapers.

A New York Times.

Q And other newspapers?

A On occasion, the New York Post, when there is a big story break.

Q When did you first become familiar with the Daily Mirror as published by the plaintiff in this action?

A I guess the first day it was published.

Q Did you have a meeting concerning the Daily Mirror?

A No.

Q When your men came back from their trips,

Kane

was the Daily Mirror discussed in your office?

A Yes.

Q Were the questions asked of these representatives to find out the various draws and the sales at various newsstands?

A Yes.

Q When they brought back these reports, were there discussions at your Monday meetings or any other meetings concerning the Daily Mirror?

A Yes. Occasionally.

Q When did you first become employed by the New York News?

A In 1957.

Q In what capacity did you start?

A Night inspector. A suburban traveling representative. Assistant country -- I am sorry. Before that, area sales manager for the Bronx and Manhattan and Mount Vernon.

Then assistant country sales manager.

Then country sales manager.

Then suburban sales manager to my present position.

Q Were you ever a rep on the street? One of those 16 men? Did you have a job like that?

periodically after the Daily Mirror started publication?

A That is the only one I can remember.

MR. GERAGHTY: With respect to the Daily Mirror?

THE WITNESS: Yes.

Q The information on this form, marked Exhibit 2, where did you get the information?

A For the wholesalers, in most cases --

Q I am asking you, where did you get this information?

A I am trying to answer that.

MR. GERAGHTY: There is more than one category of information.

Would you like to see the documents in order to answer?

THE WITNESS: May I?

MR. FARRELL: (Handing).

Q What is your answer?

A In the case of Gaynor News Company, I either made a phone call to their circulation director, or my assistant. To the Jersey wholesalers, I made a phone call to the Jersey distributors or my assistant, or in turn, the sales representatives covering that

Kane

area, to ask them the draw of the Mirror.

In the case of the distribution of the Mirror in the five boroughs, I don't know who made the call, but I think the call was made to the Metropolitan News distributor to get the information from them.

Q Who did you talk to at Gaynor News?

A To the best of my knowledge, as I mentioned before, the circulation director, Frank Hantke.

Q Do you know when that was made?

A Do you want a guess?

MR. GERAGHTY: No guesses.

Q Who did you make the call to the Jersey wholesaler?

A To the best of my knowledge, I would say --

Q Sam?

A Maybe Sam Klinghoffer. Maybe Mel Klinghoffer.

Q Who did you make the call to at Metropolitan News?

A I didn't make the call.

Q Who did?

A I think probably the city sales manager.

Q Who would that be?

A Don Derle. Or his assistant.

Q Do you do business with the Metropolitan

News, to the best of your knowledge?

A No, we don't.

Q No business of any kind?

A Not to my knowledge.

Q In the calls that you made to allegedly Frank Hantke and to Sam Klinghoffer, what did you say when you called them?

MR. GERAGHTY: Take them separately.

Q Take them separately.

A Again, to the best of my knowledge and recollection --

MR. GERAGHTY: Don't guess.

A (Continuing) I asked --

Q This was sometime in the early part of '71. Your memo says January 12th.

A I think so.

Q Prior to that period, because the report is dated 1/12. This must have been from information prior to 1/12 and reduced in writing by you.

A I don't recall when the Mirror started, what date, to be honest with you.

Q What was your conversation with Frank Hantke pursuant to that call?

A To the best of my knowledge or recollection,

I asked him how many copies of the Mirror are they handling. I believe he gave me a figure. I don't recall the figure.

I would also like to say that we also get information on other papers.

Q I didn't ask you that. I just asked you what your conversation with Frank Hantke is.

A I think I stated it.

Q Would you say that was generally the same conversation you had with the Jersey wholesaler, Sam Klinghoffer?

A If I read that right. I don't think at that particular time the wholesalers in Jersey were handling the Mirror.

Q You told me that you spoke to Sam Klinghoffer.

A Yes.

Q I am asking you what your conversation would be.

A "How many Mirrors are you handling for distribution?"

Q You also said, to the best of your knowledge, they were not carrying the Mirror.

A So I was told, and I think it's stated there.

Q At that time, you say that the printed

copies was 105,000?

A Estimated.

Q Gathered from information that you or your men obtained by telephone calls or visits to wholesalers?

A Correct.

Q Or from visits to newsstands?

A No.

Q Who provided you with the information, if anyone did, as to where the Mirror was being printed? Do you know?

A I don't recall.

Q Were you provided with information as to the press time of the Mirror?

A I think we were.

Q Were you provided with the information as to who was distributing the Mirror?

A Could I have clarification when you say "distribute"? I don't understand the question.

Q Who was handling distribution of the Mirror?

A I guess Gaynor News and Metropolitan News Company.

Q You have that information?

A I so stated.

Q When you recapitulated this report,

Plaintiff's Exhibit 2, was this typewritten copy filledin with the printed copies, the distribution, number of papers and so on, and price structure a totally evaluation from all the reports you had, oral or written?

A Yes.

Q You forwarded this to Mr. Brunjes?

A Yes.

Q Do you have any connection with the United Press International?

A No.

Q Do you know anybody there at all?

A No.

Q Did you put on the record who Mr. Brunjes is?

Did I ask you that before?

A Mr. Brunjes at that time was sales manager.

Q One of the three above the 16 or 20 men who were on the field?

A Above me.

Q You had to report to him?

A Yes, sir.

Q In your work, is that when you were in contact with Mr. McCollough?

area, was that knowledge you gained from your staffmen, your fieldmen?

A From the men, and Metropolitan News Company.

Q Who at the Metropolitan News Company spoke to you?

A I don't know.

Q How do you know?

A I stated the city sales manager or his assistant contacted the Metropolitan News Company to determine the draw, net return and sale of the Mirror.

Q That was reported to you?

A That was reported to Bob Brunjes.

Q Not to you?

A I was suburban sales manager.

Q It was not reported to you and you are not saying this to your own knowledge?

A It was not reported to me directly, no.

Q Was it ever reported to you by any of your staffmen that there had been any free copies of the News given to any of the News dealers to help sales?

A Definitely not.

Q You say that you recall very clearly; is that right? There can be no question about that?

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PLAINTIFF'S EXHIBIT 1 MARKED FOR IDENTIFICATION IN THE DEPOSITION OF JAMES W. RODGERS, ESQ., DECEMBER 21, 1973 dsal73

TOWNLEY, UPDIKE, CARTER & RODGERS
420 EAST FORTY SECOND STREET
NEW YORK 17, N.Y.

August 31, 1965

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mirror Publications, Inc.
845 Third Avenue
New York, New York 10022

Dear Sirs:

We are the attorneys for News Syndicate Co. Inc., owner and publisher of the daily newspaper "Daily News", which is published in New York City and circulates there and elsewhere throughout the United States. Our client has been informed that you propose the publication and distribution in New York City of a newspaper called "Daily Mirror", or by a similar title in which "Mirror" is prominent.

On October 15, 1963, on the occasion of the suspension of the newspaper published by The Hearst Corporation in New York City and known variously as "Daily Mirror" and "New York Mirror", our client acquired all rights to the use of such names as applied to a newspaper including the registered trademarks that had issued to The Hearst Corporation.

If our client's information is correct, the publication and circulation in this city of a newspaper under the title "Daily Mirror" or a similar name would (a) confuse the general public into believing that such newspaper was somehow connected with the former publication of that name, and (b) violate the rights of News Syndicate Co. Inc., for which a valuable consideration was paid.

You are requested to change the name of your forthcoming publication so as to eliminate any possibility of public confusion or deception, and so as to avoid any impairment of our client's proprietary interests as

PLAINTIFF'S EXHIBIT 1 MARKED FOR IDENTIFICATION IN THE DEPOSITION OF JAMES W. RODGERS, ESQ., DECEMBER 21, 1973 dsal74

Mirror Publications, Inc. -2- November 21, 1973

described above. Should you fail to do so, appropriate action will be taken to restrain any infringing or unfairly competing use.

A prompt reply is requested, so that our client may be fully apprised of your present and future plans.

Very truly yours,

JAMES W. RODGERS

Mirror Publications, Inc.
845 Third Avenue
New York, New York 10022

REGISTERED MAIL
RETURN RECEIPT REQUESTED

dsa175

PLAINTIFF'S EXHIBIT 2 MARKED FOR IDENTIFICATION IN THE DEPOSITION OF JAMES W. RODGERS, ESQ., DECEMBER 21, 1973

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CABLES
TUCARRO NEW YORK

March 16, 1971

Daily Mirror
42-15 Crescent Street
Long Island City, New York 11101

Attention: Mr. R. W. Farrell

Dear Sir:

We are the attorneys for New York News Inc., owner and publisher of the newspapers "Daily News" and "Sunday News" which are published in New York City and circulated there and elsewhere in the United States. It has come to the attention of our client that you are carrying out a promotion in which you are using the contest, "Post Position".

As you know, this contest was one used by the "Mirror" that was once published by The Hearst Corporation. On October 15, 1963 our client acquired from The Hearst Corporation all rights to the use of this promotion and contest and various other promotion programs that had been used by the "Mirror". Following its acquisition of the "Mirror", our client used "Post Position" as a promotion item.

In view of the foregoing, it is requested that you cease to publicize the "Post Position" contest since it is an impairment of our client's proprietary interest in it. Should you fail to do so, appropriate action will

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be taken to restrain this infringing and unfairly competing use.

A prompt reply is requested so that our client may be apprised of your intentions with respect to this subject matter.

Very truly yours,

TOWNLEY, UPDIKE, CARTER & RODGERS

By: Edward Maher

EDWARD M. MAHER

EMM:vlr

Registered/RRR

a week?

A You want to break it up to the last two years? I haven't had dinner with him at all.

Q You are not talking with him?

A Right.

Q Prior to the two years, how many times did you meet with him?

A At least once a week.

Q Did you meet at the Hampshire House?

A Not necessarily. I met at his own house.

Q Didn't you discuss this case with him?

A Never. He had mentioned to me that there is a case between the Mirror and the News and him.

Q And that is all?

A That he's in good company with the Daily News, and that's it.

Q You never discussed the case?

A No. In a joking way, he mentioned it.

Q You never discussed this matter?

A Not the details.

Q At Marblehead?

A Never discussed the details of the case.

Q In the restaurant?

A Never discussed the details.

Q Where did you see him?

A American News.

Q Was there any purpose to that meeting, was there any purpose in your meeting Roy Cohen at the American News Company?

A American News Company business.

Q Was this case discussed?

A No, sir.

Q Did you ever discuss this case with Roy Cohen?

A No, sir.

Q Never?

A Never.

Q When I refer to American News Company, I am referring to the subsidiaries of Ancorp --

A Yes.

Q Have you ever discussed this case with Roy Cohen or anyone else? I am referring to the four defendants, which are Ancorp, American News, Union News and Henry Garfinkle.

A Right.

Q I am examining you with regard to those people.

A Okay.

Q You never discussed this case with Roy Cohen?

A No, sir.

Q Did Roy Cohen give you any instructions concerning the way to answer questions in your EBT this morning?

A No.

Q Does Roy Cohen know that you are being examined here this morning?

A Not through me.

Q Not through you?

A No.

Q How often, in the past five years, have you visited Roy Cohen at his home and office?

A Very often.

Q When was the first time you visited his home and office?

A The last five years?

Q Yes.

A Five years ago.

Q You say about five years ago?

A You said when is the last time in the last five years.

Q I said the first time that you went. You say you have been going there within the past five years?

A No, I said I have gone for 15 years.

Q You have been going to Roy Cohen's home and office for 15 years?

A Yes.

Q When was the last time you were at his home and office?

A Last week.

Q How often in those 15 years were your visits to Roy Cohen?

A Whenever an occasion would come.

Q So that in visiting Roy Cohen in the period of 15 years and, more recently, a few weeks ago, you never discussed this case with him?

A No.

Q This very case?

A No.

Q You say you never discussed this case at all with Roy Cohen?

A No.

Q Was there ever an occasion that he discussed it with you?

A No.

Q Were you ever asked to intercede in this case with Henry Garfinkle by Roy Cohen?

A In this case?

Q Yes.

A No.

Q Do you have any brothers?

A Yes.

Q What is your brother's name?

A Sol Levine.

Q What is his occupation?

A He's an accountant.

Q Do you have any brothers that are in the trucking business?

A No.

Q Were you ever in the trucking business?

A 15 years ago.

Q Was your partner in that trucking business John Gigglio?

A For one year, E & M Trucking.

Q What did you truck?

A Trucked candy.

Q To Irving Goldman?

A No.

Q Do you know Irving Goldman?

A Only through the paper, and I met him at a couple of affairs.

Q Do you know Gaynor News Company?

questioning that he is now pursuing with respect to the change of management of Ancorp in 1973, be discontinued at this time with the understanding that, if Mr. Farrell wishes to pursue that line, that he arrange to make an immediate application to Judge Frankel for a further deposition date to pursue this line of testimony at a subsequent time when Mr. McCollough can be represented by counsel. The point that I simply want to make is that if this application is going to be made, I would like it to be made within the next two days, because our date for filing motions here is the 28th, and I want to know whether or not this line is going to be pursued in conjunction with our preparation of motion papers.

MR. FARRELL: Off the record.

(Discussion held off the record.)

BY MR. FARRELL:

Q Do you know a Jack Underwood?

A I know Jack.

Q Do you know who he is employed by?

A No.

Q Do you know Jack Underwood?

A I know him, yes.

Q When is the last time you saw him?

A Oh, maybe two, two and a half years ago, estimated time.

Q The last time you saw him?

A Yes.

Q Did you know, at that time, that he was employed as circulation director of the New York News?

A When I knew him, I knew he was employed with the Daily News.

Q Did your company do business with him?

A With the Daily News?

Q Yes.

A Yes.

Q You have not seen him for two years?

A As I recall, it's been at least two years.

Q Have you had any phone calls with him within the past year or two?

A No.

Q Do you know whether Mr. Garfinkle has?

A I do not.

Q Did Mr. Underwood ever come to your office?

A He may have come, I'm not sure.

Q Do you know Harry Kane?

A The name might ring a bell.

Q Did you have any conversations with Jack Underwood in 1968?

A With Jack Underwood in 1968?

Q Right. You said you have not seen him for the past two or three years. I am going beyond that. 1972?

A Probably.

Q Did you have any in 1971?

A Probably.

Q Did you have any in 1968 and 1969?

A Probably.

Q What was that relationship, what were the purposes, what were the conversations?

A I don't remember any specific details.

Q What did you generally talk about to Jack Underwood?

A I may have seen him at some social affairs, but I had very little -- we had some affairs at dinners and so forth -- but as far as actually -- the last conversation I remember with Jack Underwood was when we went into Chapter XI to ask him to deliver the papers.

Q They were delivering papers to you at that time and prior to that time?

A Yes.

Q Did you ever discuss circulation problems with him?

MR. GERAUGHTY: Object to the form of the question.

Q Your discussions with Jack Underwood were business conversations dealing with the business of Ancorp?

A I do not recall the specific conversation we had.

Q What would your conversations with Jack Underwood normally be, with regard to your relationship with the Daily News and Ancorp?

A It might be if we didn't get the papers on time or something like that.

Q Who was in charge at Ancorp with regard to space and display of periodicals and newspapers on your Union newsstands?

A Space and display?

Q Yes.

A Well, there was no specific allocation of space and display for every publication.

Q You know that in the Federal Trade act against Ancorp, the question came up of preferred space. You

(Discussion held off the record.)

MR. KLEIN: I am just trying to get his familiarity with the subject.

A As I recall, are you referring, specifically, to the Daily Mirror?

Q Yes.

A As I recall, the Daily Mirror came out in 1971.

Q 1971?

A I think this was the date.

Q For how long do you understand a space was allocated for it?

A As long as we handled it.

Q When was that?

A I think it was -- I would have to say, approximately three, four, five days, somewhere along there.

Q Two, three, four, five days?

A Yes.

Q And then it was discontinued?

A It was discontinued.

Q Do you remember the order given for the discontinuance of it?

A Yes.

Q Did you make that order?

A Yes.

Q What was the form of the order? And to whom did you give the order?

A Mr. Rausch, and I will have to explain. When the Daily Mirror came on the scene, they went to Mr. Rausch to get approval as to whether or not we would handle the publication.

MR. FARRELL: May I interrupt?

Answer the question.

THE WITNESS: I have to answer it in the way that it would be a proper answer.

Q Any way you please.

A He came to me and asked me if we would handle him. At that particular time, I said we would not be interested.

Q You say you answered him that you would not be interested?

A That particular time, because it wasn't even out. The paper was not out.

Q It was a prospective situation?

A And nobody at that time really knew whether the paper was coming out, as far as I knew.

Gregg News later called Mr. Rausch and asked if we would handle it. I told him we would but we would want a 30 percent profit.

Q 30 percent what?

A Profit.

Q Do you know who owned Gregg News?

A Do I know who owned --

Q The proprietorship.

A Archie Gordon -- I don't know whether it was Archie Gordon or not.

Archie Gordon called Mr. Rausch.

Q Do you know Archie Gordon?

A I couldn't recognize him if I saw him.

Q Do you know the name?

A I know the name.

Q Do you know with whom he is connected?

A I do not.

Q Do you know whether he was connected at all with any other associate organization of yours?

A No.

Q Was he connected with the Daily News, to your knowledge?

A Not to my knowledge.

Q You don't know?

A No.

Q Who was he?

A He was a distributor of newspapers.

Q Under what name?

A Gregg News, as far as I know.

Q Was he an officer of Gregg News?

A I do not know.

Q For how long did you actually accept Daily Mirrors on your newsstands which were under your control?

A We accepted them as long as the Gregg News was distributing them and, as I recall the conversation from Mr. Rausch, he got a call --Mr. Rausch did -- that the Gregg News was not going to distribute them any more, that the Metropolitan News was going to distribute them.

Q That was the end of your connection with the Mirror?

A Let me finish.

And the Metropolitan News asked him what price we were paying for the publication -- Mr. Rausch -- and Mr. Rausch would not tell him, to the best of my recollection from Mr. Rausch's account to me, that he did not tell him the price we were paying. And Metropolitan asked, "Were you paying eleven cents?" And Mr. Rausch's answer was no; "Were you paying twelve cents?" And Mr. Rausch's answer was no; and Metropolitan says, "We will not deliver then to you

for eleven cents." Therefore, we would not accept them.

Q What was the nature of the relationship of Henry Garfinkle to this transaction with regard to the Mirror, so far as you knew, at that time of the year in 1968, 1969, 1970 and 1971?

A He was not in on that transaction at all.

Q So that you would say, now, that Henry Garfinkle never at any time expressed himself with respect to whether or not the Daily Mirror was to be shown, displayed on your 650 newsstands or any newsstands owned by you and the News?

A As I explained before, and I will explain it once more, Mr. Rausch made the arrangements through our newspaper department, and the instructions would come from Mr. Rausch to our stands. Mr. Rausch's instructions to our stands was to give it a full-front display. Mr. Garfinkle did not enter into it.

Q Mr. Garfinkle had nothing whatever to do with the disposition of the Mirror on the stands of Union News?

A He did not. I told you, Mr. Rausch.

Q He had nothing to do with the circulation on the Union newsstands of the Daily Mirror?

Q When was the decision made?

A The decision was made not to handle it.

Q Was there a reason given by you at the time in connection with that decision as to why you would not handle it?

A The decision came about that we wouldn't handle them because of the price factor that our own distributor set, which was not profitable enough to handle the publication which, as I say, he would not give it to us at the price he was previously giving it to us.

Q So you would now go on record to say that your employer, your Union newsstand business, refused to take the Mirror on because it was uneconomical, and for no other reason?

A No other reason.

BY MR. FARRELL:

Q Mr. McCollough, since you and I met at that meeting, was that pursuant to a letter I sent you?

A I don't recall whether you sent a letter or not, Mr. Farrell, you possibly could have, but I don't recall.

Q You were paying Gregg News how much?

A Ten and a half cents.

Q And isn't it a fact, Mr. McCollough, that I

Q You are just being smart.

A I'm not being smart.

Q As a businessman, if you can't get a folder to put papers in --

A I can get a briefcase.

Q If you can't get a briefcase?

A I'd get something else.

Q If a company told someone, "Don't do business with Farrell," then you couldn't buy anything from me.

A I don't know of anybody doing this.

Q If they did.

BY MR. KLEIN:

Q Let me ask you this, Mr. McCollough: Do you know, for the record, that during any time that any newsstands were under your supervision, whether anybody was told, either indirectly or directly, not to sell the Daily Mirror?

A Not to my knowledge, never.

Q You say that absolutely?

A Absolutely.

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Subscribed and sworn to before me

this day of , 1975.

_____

Service of 2 copies
Supplemental Appendix is c
8 day of January 1976

ATTORNEY FOR Atlantic Appellee
Henry Grafstein

Sage, Bacon & Bolan, PC
1/8/76 rec'd